

**DATED** \_\_\_\_\_ **2017**

**Cabinet Report Version  
23.06.2017**

**(1) [DevLLP]**

**(2) [Lendlease Development (Europe) Limited]**

---

---

**DEVELOPMENT MANAGEMENT AGREEMENT  
relating to services to be provided to [DevLLP] in relation  
to the Haringey Development Vehicle LLP**

---

---

**DRAFT**



**Pinsent Masons**

## CONTENTS

| Clause |  | Page |
|--------|--|------|
| 1      | DEFINITIONS AND INTERPRETATION                         | 4    |
| 2      | APPOINTMENT OF THE DEVELOPMENT MANAGER                 | 4    |
| 3      | OBLIGATIONS AND DUTIES OF THE DEVELOPMENT MANAGER      | 5    |
| 4      | RESOURCE PLANS   | 8    |
| 5      | ASSIGNMENT AND APPOINTMENT OF ADVISERS AND AGENTS      | 8    |
| 6      | OBLIGATIONS OF DevLLP                                  | 10   |
| 7      | LIMITATIONS  | 10   |
| 8      | REMUNERATION   | 11   |
| 9      | DISPUTES   | 11   |
| 10     | LIABILITY  | 12   |
| 11     | DURATION AND TERMINATION                               | 12   |
| 12     | CONSEQUENCES OF TERMINATION                            | 14   |
| 13     | FORCE MAJEURE  | 15   |
| 14     | INDEMNITY AND INSURANCE                                | 16   |
| 15     | INTELLECTUAL PROPERTY                                  | 18   |
| 16     | TUPE AND EMPLOYEES                                     | 19   |
| 17     | KEY PERFORMANCE INDICATORS                             | 21   |
| 18     | CORPORATE POWERS AND OTHER UNDERTAKINGS AND WARRANTIES | 21   |
| 19     | CONFIDENTIALITY  | 21   |
| 20     | DATA PROTECTION  | 21   |
| 21     | NOTICES  | 21   |
| 22     | NO PARTNERSHIP   | 22   |
| 23     | VARIATIONS   | 22   |
| 24     | COUNTERPARTS   | 22   |
| 25     | THIRD PARTY RIGHTS                                     | 22   |
| 26     | RESTRICTIONS   | 23   |
| 27     | INVALIDITY AND SEVERANCE                               | 23   |
| 28     | ASSIGNMENT AND NOVATION                                | 23   |
| 29     | GOVERNING LAW AND JURISDICTION                         | 23   |

|   |    |
|---|----|
| SCHEDULE 1 - DEFINITIONS AND INTERPRETATION | 25 |
| SCHEDULE 2 - SERVICES                       | 32 |
| SCHEDULE 3 – RESOURCE PLAN                  | 44 |
| SCHEDULE 4 – KEY PERSONNEL                  | 45 |
| SCHEDULE 5 - FEE PAYMENT MECHANISM          | 46 |

DRAFT

**BETWEEN:-**

- (1) **[DEVLLP]** a limited liability partnership registered in England, (LLP Number [xxx]) whose registered office is at [ADDRESS] ("**DevLLP**"); and
  - (2) **[LENLEASE DEVELOPMENT (EUROPE) LIMITED]** (Company Number 02946679) a company registered in England and Wales whose registered office is at 20 Triton Street, Regent's Place London NW1 3BF (the "**Development Manager**"),
- together the "**Parties**".

**WHEREAS:-**

- (A) The HDV has been established as a joint venture partnership between The Mayor and Burgesses of the London Borough of Haringey (the "**Council**") and [PSP] to carry out regeneration and development activities in the Borough.
- (B) DevLLP is a wholly owned subsidiary of HDV established with the Objectives, which has been set up to take responsibility for the development activities in the Borough.
- (C) DevLLP wishes to appoint the Development Manager to provide the Services on the terms and conditions set out in this Agreement in return for the payment of the Development Management Fee (subject to and in accordance with the terms of this Agreement).

**IT IS AGREED** as follows:-

1. **DEFINITIONS AND INTERPRETATION**

This Agreement shall be interpreted according to the provisions of Schedule 1 (Definitions and Interpretation).

2. **APPOINTMENT OF THE DEVELOPMENT MANAGER**

- 2.1 DevLLP appoints the Development Manager on an exclusive basis as DevLLP's property and development manager for the Development Sites through the provision of the Services to DevLLP and also for the provision of certain of the Services to HDV (for the running of its day to day business) upon the terms and conditions set out in this Agreement and the Development Manager hereby accepts its appointment and agrees to provide the Services to DevLLP and HDV throughout the term of this Agreement in accordance with the terms and conditions set out in this Agreement. For the purposes of this Agreement DevLLP may act as an agent in procuring the Services from the Development Manager on behalf of an HDV Party and accordingly the Development Manager agrees to provide the Services to DevLLP or such HDV Party as HDV shall nominate.
- 2.2 The Development Manager shall be an independent contractor with respect to the provision of the Services to DevLLP. Neither the Development Manager nor its employees shall be deemed to be the servants, agents or employees of DevLLP (save as expressly set out in this Agreement).
- 2.3 The Development Manager shall neither act nor hold itself out as having authority to act on behalf of DevLLP in any manner which is beyond the express scope of this Agreement unless otherwise instructed to do so by DevLLP.
- 2.4 The Development Manager's key personnel in relation to the Services shall be as identified in Schedule 4 (the "**Key Personnel**") The Development Manager shall, so far as it is within its reasonable control and so long as the relevant Key Personnel remain fit healthy, able and an employee of the Development Manager, procure that throughout the period of this Agreement the Key Personnel are engaged in the performance of the Services and the Development Manager's

obligations under this Agreement and shall not, from the Commencement Date until the date of termination or expiry of this Agreement, replace the Key Personnel without the prior written consent of DevLLP (such consent not to be unreasonably withheld or delayed). To the extent that the Development Manager wishes to replace any member of the Key Personnel or add any additional individual to the list of Key Personnel the Development Manager shall provide a person specification and curriculum vitae for the relevant candidate for prior approval by DevLLP (such approval not to be unreasonably withheld or delayed) and in the event DevLLP has not rejected the relevant candidate within 28 days of receipt of the candidate's curriculum vitae and person specification, DevLLP shall be deemed to have approved the candidate in question and such candidate shall be deemed to be Key Personnel going forward.

### **3. OBLIGATIONS AND DUTIES OF THE DEVELOPMENT MANAGER**

#### **3.1 General**

3.1.1 The Development Manager acknowledges that it is and shall be deemed to be fully aware of the terms of the Members' Agreement, the Project Agreements and the Business Plans and shall at all times:-

- (a) use all reasonable skill and care in performing the Services and take such actions as are to be expected of a properly qualified, experienced and competent property and development manager so as to implement and deliver the requirements of the Business Plans and to secure the Objectives;
- (b) act within the parameters of and in a manner consistent with the Business Plans; and
- (c) provide the Services in accordance with Good Industry Practice.

insofar as the Business Plans and Members' Agreement relate to the Services.

3.1.2 DevLLP shall inform the Development Manager of any material amendments or variations to the Members' Agreement and the Business Plans, to the extent that such amendments are relevant to the Services, within a reasonable time following such amendment or variation.

3.1.3 In the performance of the Services, the Development Manager shall:-

- (a) use all reasonable skill and care to deliver the outputs set out in the Development Business Plans in accordance with the development programme for each Development Site (including without limitation the longstop dates and milestone dates for each Development Site as set out in the Development Business Plan and the Development Framework Agreement);
- (b) act at all times in the best interests of DevLLP and each HDV Party;
- (c) devote such time and attention as may be necessary for the proper performance of the Services and shall use all reasonable skill and care to perform the Services in accordance with the Resource Plan;
- (d) perform the Services and its obligations under this Agreement in accordance with Good Industry Practice so as to give to DevLLP the full and complete benefit of the Development Manager's experience and expertise in relation to the development of the Development Sites;
- (e) act at all times in good faith towards DevLLP with due regard to the provisions of the Members' Agreement and the Business Plans and shall, subject to Clause 6 (Obligations of DevLLP) and the scope of the Services, comply with the reasonable, proper and lawful instructions of and use all reasonable skill and care to implement the reasonable, proper and lawful decisions of DevLLP

in relation to the management of the Development Sites and the provision of the Services:-

- (i) in so far as any such instructions or decisions would not otherwise place the Development Manager in breach of its authority set out in the Delegation Policy or any other obligation under this Agreement and/or any other agreements it has entered into with DevLLP (or any other HDV Party); and/or
  - (ii) save where such instructions or decisions are outside the scope of the Services.
- (f) notwithstanding any other provision of this Agreement (and unless prior written consent has been obtained from DevLLP to extend its authority) ensure that the Development Manager acts at all times in accordance with its permitted authorities as set out in the Delegation Policy and this Agreement and with all reasonable and proper instructions of DevLLP;
- (g) act at all times in accordance with the Law and not cause DevLLP or any HDV Party to be in breach of the Law, or of any regulation or condition imposed by any statutory undertaker;
- (h) comply with the Procurement Policy;
- (i) set up and maintain (and procure that any persons to whom it sub-contracts any of the Services pursuant to and in accordance with Clause 5 (Assignment and Appointment of Advisers and Agents) sets up and maintains) policies and procedures covering the following matters and ensure that the terms and implementation of such procedures comply with the Law, Guidance and Good Industry Practice and that they are published in written form and that copies of them (and any revisions and amendments to them) are forthwith issued to DevLLP:-
- (i) equality, diversity and equal opportunities;
  - (ii) health and safety;
  - (iii) whistleblowing and confidential reporting policies;
  - (iv) anti-fraud and corruption; and
  - (v) information and data security;
- (j) report to DevLLP promptly in writing any issue arising under any of the Development Manager's policies and procedures as specified in paragraph (i) that affects the Services together with the Development Manager's response to the relevant issue.
- (k) give such general and professional advice and assistance to DevLLP in connection with the Development Sites as may lie within the field of the Development Manager's qualifications, competence and experience and as DevLLP may from time to time reasonably request save where such advice and assistance are outside the scope of the Services;
- (l) at all times exercise its discretion and business judgment fairly and properly and in the best interests of DevLLP and each HDV Party;
- (m) have regard at all times to the principles of good estate management and professional codes of conduct and/or guidelines laid down from time to time by the Royal Institution of Chartered Surveyors (or its successor body from time to time);

- (n) not make any undisclosed profit or commission out of its duties and the Services; and
- (o) not and shall use reasonable endeavours to procure that any Sub-contractor appointed pursuant to Clause 5 (Assignment and Appointment of Advisers and Agents) shall not knowingly do or knowingly omit to do anything in connection with the provision of the Services or in the course of its or their activities, which in the reasonable opinion of DevLLP brings the standing of DevLLP and/or any of the HDV Parties and/or the Council into serious disrepute or attracts material adverse publicity to DevLLP and/or any of the HDV Parties and/or the Council.

### 3.2 **Service Delivery**

In the performance of the Services, the Development Manager shall:-

- 3.2.1 co-operate in good faith with any relevant consultants professionals or contractors appointed by DevLLP and/or any other HDV Party;
- 3.2.2 where DevLLP provides funds to the Development Manager to enable the Development Manager to fulfil its duties and obligations under this Agreement, to use such funds only for the purposes of carrying out the Services and in a prudent manner, having due regard to the nature of the Services, the requirement to provide the Services as a whole and in accordance with the Business Plans (to the extent they are relevant to the provision of the Services) and the Objectives;
- 3.2.3 perform the Services in such manner and at such time so that no act, omission or default of the Development Manager in relation to the performance of the Services shall knowingly cause DevLLP and/or any HDV Party to be in breach of the Law or of any regulation or condition imposed by any statutory body or competent authority or statutory undertakers or other authority having jurisdiction or authority or statutory powers of enforcement;
- 3.2.4 procure, at all times during the continuance of this Agreement, that the Development Manager shall employ and/or engage a sufficient number of suitably skilled, qualified and fully trained persons to provide the Services and to enable the Development Manager to comply with the terms of this Agreement; and
- 3.2.5 use reasonable endeavours to comply with such timescales as may be agreed with DevLLP in relation to the provision of the Services from time to time.

### 3.3 **Reporting and Progress Monitoring**

In the performance of the Services, the Development Manager shall:-

- 3.3.1 keep DevLLP regularly informed of progress of all Services in which the Development Manager is engaged under this Agreement and shall provide all such information in its possession or control in relation to the Services as DevLLP shall reasonably request from time to time;
- 3.3.2 make full and timely disclosure to DevLLP promptly upon becoming aware of any:-
  - (a) matter which adversely affects any of the Development Sites, any HDV Party or adversely affects any HDV Party's liability in respect of any of the Developments Sites;
  - (b) matter which arises (or is likely to arise) and which would have a material adverse effect on the ability of the Development Manager to perform the Services in accordance with this Agreement;
  - (c) of the insolvency events specified in Clause 11.3 (Duration and Termination) arising in relation to the Development Manager; and/or

- (d) actual or potential conflict of interest which may arise with the Development Manager or any of the Development Manager's directors or Key Personnel in the performance of the Services and/or the Development Manager's duties and obligations under this Agreement;
- 3.3.3 allow DevLLP and/or any HDV Party (and their respective Members, employees, agents and advisers), on reasonable prior notice, such access to Key Personnel and to inspect and/or take copies of any documents or records as may be reasonably necessary or appropriate for the purpose of or in connection with the Services and/or the Business and for the purpose of monitoring the Development Manager's performance of the Services in accordance with this Agreement;
- 3.3.4 when reasonably required by DevLLP (giving details of time, location and agenda) to attend meetings of the DevLLP Board and/or HDV Board (at no cost to DevLLP or HDV) to present its Monthly Performance Report, to provide a full briefing and professional advice to DevLLP or HDV on the performance of the Services and the Development Sites and on general matters in respect of HDV Parties, to seek DevLLP Board approval or HDV Board approval where required in accordance with the Delegation Policy) and to support (to the extent consistent with the Development Manager's obligations under this Agreement) its actions and to answer either at, or as soon as is reasonably practicable after, such meeting all enquiries made at such meetings; and
- 3.3.5 provide DevLLP with a report detailing the Development Manager's performance and delivery of the Services during the immediately preceding month (the "**Relevant Month**") in accordance with the terms of this Agreement (the "**Monthly Performance Report**") and in particular the relevant provisions of Schedule 6. For the avoidance of doubt the first Monthly Performance Report shall relate to the period from and including the Commencement Date and expiring on the last Business Day of the month in which the Commencement Date occurred (and the Monthly Performance Report shall become due on the fifth Business Day thereafter).

#### 4. **RESOURCE PLANS**

- 4.1 The Development Manager shall produce a draft Resource Plan in respect of each Development Site (containing the information required by paragraph 1.1 of Schedule 3) for the approval of DevLLP (such approval not to be unreasonably withheld or delayed) prior to the commencement of the performance of the Services in respect of the relevant Development Site. The Resource Plan will be contained within each Stage approval request and within each Development Business Plan.
- 4.2 Each Resource Plan shall contain the information set out in and shall be implemented in accordance with the provisions of Schedule 3 (Resource Plan).
- 4.3 The Development Manager shall use all reasonable endeavours to perform the Services in respect of the relevant Development Site in accordance with the Resource Plan as approved by DevLLP. The Development Manager (acting reasonably) shall be entitled to propose updates to each Resource Plan at six monthly intervals for approval by DevLLP (not to be unreasonably withheld or delayed). Save as expressly provided, any amendments to any Resource Plan shall require the prior approval of DevLLP (not to be unreasonably withheld or delayed).

#### 5. **ASSIGNMENT AND APPOINTMENT OF ADVISERS AND AGENTS**

##### 5.1 **Sub-contracting by the Development Manager**

- 5.1.1 The Development Manager shall not sub-contract, assign, novate, delegate or otherwise transfer any benefit or obligation, or the performance of any of its rights, obligations or duties under this Agreement other than in accordance with the provisions of this Clause 5 (Assignment and Appointment of Advisers and Agents).



- 5.1.2 The Development Manager may sub-contract the Services (or part thereof) provided always that the Development Manager:-
- (a) has received the prior written consent of DevLLP (such consent not to be unreasonably withheld or delayed);
  - (b) the Development Manager may only sub-contract the Key Services with the prior written consent of DevLLP and DevLLP shall be deemed to be acting reasonably in withholding consent to the sub-contracting of any Key Services at its absolute discretion;
  - (c) shall select Sub-contractors which are appropriately qualified to undertake the task for which they have been appointed;
  - (d) exercises full supervision of the performance of its Sub-contractors and for any costs or fees of any such sub-contracting;
  - (e) places obligations and liabilities on each Sub-contractor (where appropriate) which are no less onerous than the obligations and liabilities placed on the Development Manager under this Agreement in respect of the Services which are the subject of the sub-contract taking into account the nature of the services required under that arrangement;
  - (f) shall be responsible for all acts and omissions of its Sub-contractors as though they were its own;
  - (g) ensures (on appointment of any Sub-contractors and on each subsequent anniversary of each appointment thereafter) that such Sub-contractors have adequate insurance commensurate to their role with an insurer of repute (including, but not limited to professional indemnity insurance) and upon request delivers evidence of the same to DevLLP; and
  - (h) shall be responsible for the costs and fees of such sub-contract (including all costs incurred by the Development Manager as a result of any sub-contract).
- 5.1.3 For the avoidance of doubt, no sub-contract under Clause 5.1.2 (Sub-contracting by the Development Manager) shall in any way release the Development Manager from any of its obligations under this Agreement.

## 5.2 **Appointments by the Development Manager on behalf of DevLLP**

5.2.1 Subject always to:-

- (a) the Procurement Policy; and
- (b) the Delegation Policy,

the Development Manager shall if required as part of the provision of the Services be entitled to appoint consultants, advisors and contractors to provide works or services to DevLLP as required on behalf of DevLLP ("**Appointment**") provided always that such Appointment complies with the provisions of Clause 5.2.2 and Clause 5.2.3. Any such consultant, advisor or contractor is referred to as an "**Appointee**".

5.2.2 All Appointments made in accordance with Clause 5.2.1 (Appointments by the Development Manager on behalf of DevLLP) shall comply with the Procurement Policy and the terms of any delegation made by DevLLP to the Development Manager and, unless otherwise agreed by the Parties, be entered into in the name of DevLLP. The Development Manager shall make full and complete disclosure of any interest (whether pecuniary or non-pecuniary) which the Development Manager, or its officers or employees may have in the contracting entity that is the subject of such proposed or existing Appointment and notify DevLLP of the name and identity of the proposed or

existing Appointee, including any Appointee that may be a company within the Development Manager's Group.

5.2.3 The Development Manager shall:-

- (a) use all reasonable endeavours to fully enforce the terms of each Appointment on behalf of DevLLP provided that the Development Manager shall not be liable for any act omission or default of any Appointee save to the extent caused by a breach of this Agreement by the Development Manager; and
- (b) subject to Clause 15.3 (Intellectual Property), procure that (unless otherwise agreed by DevLLP), as part of the terms of the Appointment, each Appointee is required to comply with obligations no less onerous than those placed on the Development Manager under this Agreement (to the extent applicable and proportionate to the works and/or services being carried out by the Appointee).

## 6. OBLIGATIONS OF DEVLDP

6.1 Subject always to Clause 7 (Limitations) DevLLP shall:-

6.1.1 supply or arrange for others to supply to the Development Manager, without charge, and in such reasonable time so as not to prevent, delay or disrupt the performance of the Services, all data, information and records relating to the Development Sites (or part thereof) (or copies thereof) which are:-

- (a) in its possession or under its control; and
- (b) which are reasonably requested from time to time by the Development Manager;

6.1.2 where such Development Sites (or any relevant part of them) are within the control of DevLLP, ensure that the Development Manager has reasonable access to the Development Sites (or any relevant part of them) as may be necessary for the proper performance of its duties under this Agreement;

6.1.3 where DevLLP requires the Development Manager to comply with any proper and lawful instruction or direction where the subject matter of such instruction or direction is not set out in the scope of the Services to be provided by the Development Manager in Schedule 2 (Services) and the cost of complying with such instruction or direction will incur an additional cost, ensure that the Development Manager has the funds it reasonably requires to comply with such instruction or direction;

6.1.4 pay the Development Management Fee to the Development Manager subject to and in accordance with the provisions of Clause 8 (Remuneration) and Schedule 4 (Fee Payment Mechanism).

## 7. LIMITATIONS

7.1 Notwithstanding any other provision of this Agreement, the Development Manager shall not, when carrying out and performing its obligations and duties under this Agreement, expend on behalf of DevLLP or commit DevLLP to expend in any way whatsoever, any sum of money to any third party save:-

7.1.1 where and to the extent that such expenditure has either been approved in writing by DevLLP or is included in a written instruction or direction issued by DevLLP or is expressly authorised under the Delegation Policy; or

7.1.2 where and to the extent that such expenditure is contained in the Approved Budget set out in a Development Business Plan.

7.2 For the avoidance of doubt, and subject to Clause 7.1.2, the Development Manager shall be entitled to take such actions as are set out under the "Development Manager" heading in the Delegation Policy without the further prior written approval of DevLLP.

## 8. REMUNERATION

8.1 The Development Management Fee shall be payable subject to and in accordance with the provisions of this Clause 8 (Remuneration) and Schedule 4 (Fee Payment Mechanism).

8.2 In consideration of the provision of the Services to DevLLP and subject to the submission by the Development Manager to DevLLP of the Monthly Performance Report in accordance with Clause 3.3.5 (Reporting and Progress Monitoring) and the submission of an invoice (and Monthly Time Sheet) no earlier than the date required in accordance with the provisions of Schedule 4 DevLLP shall pay to the Development Manager the "**Development Management Fee**".

8.3 For the avoidance of doubt but subject to Clauses 3.1.3(e) (Obligations and Duties of the Development Manager) the Development Management Fee shall be inclusive of all costs and expenses incurred by the Development Manager in connection with performing the Services and its obligations under and in connection with this Agreement and the Development Manager shall be responsible for all such costs and expenses.

8.4 Subject to Clause 8.1 (Remuneration) the Development Management Fee shall be payable to the Development Manager within 28 days of the submission by the Development Manager of the relevant invoice in respect of the Development Management Fee (or part thereof) which the Development Manager is entitled to pursuant to Schedule 4 (Fee Payment Mechanism).

8.5 All Development Management Fee payments should be made by bank transfer to such account as the Development Manager shall notify to DevLLP from time to time.

## 9. DISPUTES

9.1 If any dispute or difference arises in relation to this Agreement which is not resolved by the Parties within twenty (20) Business Days (or such longer period as the Parties may agree in writing) of the dispute or difference first arising, each Party shall be entitled to refer such matter to an Expert for determination where it considers (acting reasonably) that such matter is capable of determination by an Expert.

9.2 The Expert shall have due regard to the provisions of this Agreement and shall act as an Expert and not as an arbitrator. The Expert shall allow all Parties to make representations and counter-representations within a reasonable period and shall give his decision as soon as reasonably practicable.

9.3 The decision of the Expert shall be notified in writing to all Parties within thirty (30) Business Days of the date of the referral of the dispute to the Expert (or such other date as agreed by the Parties in writing), together with the reasons for and any evidence on which he has relied in coming to such decision. The Expert's decision shall be final and binding upon them (provided it is notified to the Parties in writing within the specified or agreed timescale) in the absence of manifest error or fraud and the costs of the determination shall be borne as the Expert shall determine is fair and reasonable in all the circumstances.

9.4 If the Expert shall relinquish his or her appointment or die or if it shall become apparent that for any reason he or she will be unable to complete his or her duties hereunder then any Party may apply to the appropriate President (or the next the most senior available officer) of the Royal Institution of Chartered Surveyors or the Law Society or the Institute of Chartered Accountants in England and Wales (as appropriate to the determination of an appropriate expert in relation to a Deadlock Matter under the Members' Agreement) for a substitute to be appointed in his or her place which procedure may be repeated as many times as necessary.

9.5 In circumstances where no relevant Party has referred the dispute or difference which has arisen in relation to this Agreement for determination by an Expert in accordance with the provisions of Clause 9.1 (Disputes) within 10 Business Days of the dispute or difference first arising (or from the

date that the relevant Parties agree (acting reasonably) that the matter is not capable for decision by an Expert or the Expert fails to notify the Parties of his/her decisions within the specified or agreed period set out in Clause 9.3 (Disputes)), the relevant Parties shall attempt to settle the matter by mediation in accordance with the Centre for Effective Dispute Resolution ("**CEDR**") Model Mediation Procedure. Unless otherwise agreed between the relevant Parties, the mediator will be nominated by CEDR. To initiate the mediation a Party must give notice in writing ("**Mediation Notice**") to the other relevant Party or Parties requesting a mediation. A copy of the request should be sent to CEDR. The mediation will take place in Haringey and will start not later than 20 Business Days after the date of the Mediation Notice. If the matter is not settled by mediation within 30 Business Days of the commencement of mediation or within such further period as the relevant Parties may agree in writing, then DevLLP shall be entitled to terminate this Agreement by the service of 30 Business Days notice on the Development Manager.

## 10. **LIABILITY**

10.1 Subject to Clause 10.2, the liability of the Development Manager to DevLLP (and any HDV Party) or any other person under or in connection with this Agreement for all claims, whether in contract, tort (including negligence) or otherwise, shall not exceed (this information is contained in the exempt part of the report) per claim and/or (this information is contained in the exempt part of the report) in the aggregate (provided this limit on liability shall not apply in respect of claims under or in connection with Clauses 16.3.2, or 16.3.3(c)).

10.2 Nothing in this Agreement shall exclude or limit the liability of any Party for:-

10.2.1 death or personal injury caused by its negligence (or that of its contractors, agents or employees); or

10.2.2 fraud or fraudulent misrepresentation.

10.3 Where the Development Manager is required to make any payment to DevLLP and/or any HDV Party or the Council (as applicable) following final agreement or determination of the relevant claim as a result of any liability under the terms of this Agreement, such amount shall be immediately payable as a debt owed by the Development Manager to DevLLP and/or any HDV Party and/or the Council (as applicable).

## 11. **DURATION AND TERMINATION**

11.1 This Agreement shall commence on the Commencement Date and shall continue in force until the earliest to occur of:-

11.1.1 the date this Agreement is terminated forthwith by notice in writing by DevLLP in accordance with Clause 27 (Duration, Termination and Winding up) of the Members' Agreement;

11.1.2 subject to Clause 12.1A (Duration and Termination), the date of termination of the Members' Agreement;

11.1.3 the PSP no longer being a member of the HDV;

11.1.4 the date agreed in writing between the Parties;

11.1.5 the date of termination of HDV;

11.1.6 a date or event specified in this Clause 11 (Duration and Termination); and

11.1.7 a date specified in Clause 13.4 (Force Majeure).

11.2 In the event of a Termination Event under the Members' Agreement, the Parties agree that this Agreement shall partially terminate except for the provisions required for the Development Manager to manage the completion of the works or Services on the land interests referred to in Clause 27.2.7(c) of the Members' Agreement and any other contracts necessary to complete such

works and realise development proceeds. In these circumstances, the surviving provisions of the Development Management Agreement will automatically terminate with immediate effect after the completion of such works and other actions required in order to realise development proceeds and the Development Management Fee shall be reduced on a pro rata basis.

11.3 The appointment of the Development Manager (and its authority to act) shall terminate immediately upon any of the following occurring:-

- 11.3.1 the Development Manager being deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- 11.3.2 an administrative receiver, receiver, administrator, liquidator or similar officer is appointed in respect of the entirety of the Development Manager's assets or undertaking;
- 11.3.3 a floating charge crystallising over the Development Manager's material assets and the holder of such floating charge successfully takes steps to enforce such security;
- 11.3.4 a distress, distraint, charging order, attachment, execution or other process is levied against any of the Development Manager's assets and remains undischarged for a period of twenty one (21) days;
- 11.3.5 there being an unsatisfied judgment or order of any court or tribunal, or award of any arbitrator, outstanding against the Development Manager;
- 11.3.6 a meeting of the Development Manager's creditors, or any class of them, is held or summoned or a proposal is made for a moratorium, composition or arrangement in relation to any of its debts, or for a voluntary arrangement under Part 1 of the Insolvency Act 1986; and/or
- 11.3.7 anything analogous to any of the events set out in Clauses 11.3.1 to 11.3.6 (inclusive) occurring in respect of the Development Manager in any jurisdiction.

11.4 Without prejudice to any other rights or remedies of the Parties but subject to Clause 11.6 (Duration and Termination), this Agreement may be terminated forthwith (either in whole or in relation to certain Services only) by notice in writing by DevLLP in the event of the Development Manager:-

- 11.4.1 being in breach of any material obligation under this Agreement which is not capable of remedy;
- 11.4.2 being in breach of any material obligation under this Agreement which is capable of remedy and the Development Manager has failed to remedy such breach within thirty (30) Business Days (or such alternate period determined by the DevLLP Board acting reasonably) following the service upon the Development Manager of a written notice notifying the Development Manager of such breach; and/or
- 11.4.3 being in breach of any of its obligations to carry out the Services under or in accordance with this Agreement which materially and adversely affects the delivery of any Business Plan or any of the Objectives; and/or
- 11.4.4 being in persistent breach of any obligation under this Agreement and/or;
- 11.4.5 being in breach of Clause 14.2 (Indemnity and Professional Indemnity Insurance); and/or
- 11.4.6 in the event the cap set out in Clause 10.1 (Liability) is met; and/or
- 11.4.7 a breach of obligations under this Agreement to:-
  - (a) act in accordance with the Business Plans; or

- (b) incur costs on behalf of DevLLP and/or any HDV Party (as applicable) which are in excess of those set out in the Approved Budget and are not approved in accordance with the Delegation Policy save in each case with the prior written consent of DevLLP);

11.4.8 (including its directors or any persons with powers of representation, decision or control of the Development Manager) committing or knowingly permitting any act to be committed which is fraudulent or dishonest;

11.4.9 bringing the standing of DevLLP or any HDV Party and/or the Council into serious disrepute or bringing about material adverse publicity in relation to DevLLP or any HDV Party and/or the Council and following the service upon it of written notice from such party informing the Development Manager that this is the case, the Development Manager failing to remedy or change the matter, event or circumstance which has caused such serious disrepute or material adverse publicity (as the case may be) within twenty (20) Business Days of the date of service of such notice. For the avoidance of doubt, this provision shall not apply where the action taken by the Development Manager which causes such disrepute or adverse publicity was undertaken at the written request of the DevLLP Board or HDV Board or was particularly specified in the Business Plans;

11.4.10 serving a notice upon DevLLP in compliance with Clause 14.4 (Indemnity and Professional Indemnity Insurance) or failing to serve such a notice in breach of Clause 14.4 (Indemnity and Professional Indemnity Insurance); and/or

11.4.11 failing to comply with its obligations in Clause 14 (Indemnity and Professional Indemnity Insurance) of this Agreement and failing to remedy such default within three (3) Business Days of a notice by DevLLP of such breach.

11.5 Notwithstanding any other provision of this Agreement, the Parties agree that no matter shall constitute a termination event of the Development Manager pursuant to Clause 11.4 (Duration and Termination) where such termination event is materially:-

11.5.1 attributable to external factors outside of the control of the Development Manager or which occur as a result of a Force Majeure Event;

11.5.2 attributable to the delay by DevLLP or an HDV Party in respect of any decision or action required by DevLLP or an HDV Party as applicable) (save to the extent that any such delay arises out of any fault on the part of the Development Manager); and/or

11.5.3 attributable to an act or omission of DevLLP or an HDV Party or a breach by any one or more of them of their respective obligations under the Project Agreements,

provided that this Clause 11.5 (Duration and Termination) shall not apply to or affect the termination events set out in Clauses 11.4.9 or 11.4.11.

11.6 In the event of a Termination Event under the Members' Agreement the Parties agree that this Agreement shall continue until such time as it is terminated in accordance with Clause 27.2.7(g) of the Members' Agreement.

11.7 In the event that this Agreement is terminated pursuant to this Clause 11 (Duration and Termination) the Development Manager hereby confirms that it shall have no other claim whatsoever against DevLLP, any HDV Party or the Council in respect of such termination, whether by way of a claim for compensation, breakage costs, damages or otherwise, other than in accordance with Clause 12.5.

## 12. CONSEQUENCES OF TERMINATION

12.1 On a termination of this Agreement (whether in whole or in part) DevLLP and/or any HDV Party shall be entitled to engage a third party development manager for the Development Sites (in respect of those Services which have been terminated pursuant to Clause 11 (Duration and Termination)).

- 12.2 Upon any termination of this Agreement (whether in whole or in part) for whatever reason:-
- 12.2.1 the Development Manager shall take action to:-
- (a) wind-up the terminated Services in a professional manner; and
  - (b) on the reasonable instruction of DevLLP, hand over all relevant information and documents regarding the Development Sites or the Services performed up to the date of termination (including any Confidential Information) to DevLLP, any third party development manager engaged by DevLLP or any other HDV Party,
- in an orderly and timely manner (with effect from the date of the appointment of such third party development manager, where relevant); and
- 12.2.2 cause to be delivered to DevLLP (at no cost to DevLLP) all Confidential Information, relevant documents, records, information, data, drawings, specifications, calculations, and other materials under its control and relating to the Development Sites (whether in the course of preparation or completed) including any copies thereof (whether electronic or otherwise) (but subject to any legal or regulatory requirement for the Development Manager to retain a copy of any document for audit purposes and provided that the Development Manager notifies DevLLP of all such documents of which copies have been retained).
- 12.3 Termination of this Agreement (in whole or in part) for any reason whatsoever shall be without prejudice to the accrued rights or claims of any Party hereto in relation to any act or omission of the other prior to such termination.
- 12.4 Notwithstanding the termination of this Agreement, the provisions of this Agreement shall continue to bind each Party insofar as and so long as may be necessary to give effect to their respective rights and obligations hereunder.
- 12.5 In the event that this Agreement is terminated in accordance with the provisions of Clause 11 (Duration and Termination), the Development Manager shall only be entitled to the Development Management Fee in respect of those Services performed up to the date of termination. In such circumstances neither DevLLP nor any HDV Party shall be liable to the Development Manager for any loss of profit or opportunity, loss of contracts or other costs, losses and/or expenses arising out of or in connection with such termination.
13. **FORCE MAJEURE**
- 13.1 If by reason of a Force Majeure Event occurring on or after the Commencement Date a Party is wholly or partially unable to carry out its obligations under this Agreement (the "**Affected Party**") then the Affected Party shall promptly serve notice in writing to the other Parties, setting out:-
- 13.1.1 the particulars of the Force Majeure Event and its effect upon its performance under this Agreement; and
  - 13.1.2 to the extent known, the expected duration of the Affected Party's failure to perform.
- 13.2 An Affected Party shall not be entitled to relief under Clause 13.4 (Force Majeure) for any failure or delay in complying with its obligations under or in accordance with this Agreement until the notice specified in Clause 13.1 (Force Majeure) has been provided to the other Parties.
- 13.3 The Affected Party shall:-
- 13.3.1 make reasonable efforts to prevent, remove, avoid and mitigate the effects of any Force Majeure Event including recourse to alternative acceptable sources of services, equipment, supplies and materials and the payment of reasonable sums of money;
  - 13.3.2 use reasonable efforts to ensure a prompt resumption of normal performance of this Agreement after the cessation of a Force Majeure Event; and

13.3.3 when reasonably requested by another Party, provide that Party (and a copy to the other Parties) with notice more fully describing the relevant Force Majeure Event, its cause, the efforts being made to remove, avoid and mitigate its effects and an estimate of the duration of the Force Majeure Event.

13.4 Following the service of notice in accordance with Clause 13.1 (Force Majeure) and provided that the Affected Party has complied with the provisions of Clause 13.3, the Affected Party shall not be liable for any cost, expense or damages, failure or delay in complying with its obligations under or in accordance with this Agreement to the extent that it is prevented from or delayed in performing its obligations by one or more Force Majeure Events and its or their effects or by any combination of those events and effects. Such obligations shall be suspended for such period or periods as may be required for the Affected Party to overcome the effects of such Force Majeure Event provided, however, that:-

13.4.1 the suspension of performance is of no greater scope and of no longer duration than the Force Majeure Event and the time reasonably necessary to attend to the consequences of such Force Majeure Event;

13.4.2 no relief shall be granted to a Party in accordance with this Clause to the extent that such failure or delay would have been experienced by such Party even if such Force Majeure Event had not occurred; and

13.4.3 in the event that the Affected Party gives notice under Clause 13.1 (Force Majeure) and the relevant Force Majeure Event continues for a continuous period of three (3) months (from the date of the notice under Clause 13.1 (Force Majeure)) during which the Affected Party is unable to perform its obligations under this Agreement, then any Party shall be entitled to terminate this Agreement immediately by notice in writing.

13.5 The Affected Party shall promptly serve notice in writing to the other Parties following:-

13.5.1 the cessation of the relevant Force Majeure Event; and

13.5.2 the cessation of the effects of such Force Majeure Event on the enjoyment by such Affected Party of its rights or the performance by it of its obligations under this Agreement.

## 14. **INDEMNITY AND INSURANCE**

14.1 The Development Manager shall indemnify and keep indemnified, DevLLP and each of the HDV Parties against all and any losses, costs, claims expenses and proceedings arising as a consequence of its fraud, negligence, reckless disregard, misconduct, and /or bad faith and/or breach by it of any of its obligations under this Agreement (or any breach by any person to whom it delegates the performance of any of the Services).

14.2 The Development Manager warrants and represents that it has in force:-

14.2.1 professional indemnity insurance cover for not less than (this information is contained in the exempt part of the report) per individual claim and/or (this information is contained in the exempt part of the report) in the aggregate in each annual period of insurance;

14.2.2 public liability insurance for not less than (this information is contained in the exempt part of the report) per individual claim; and

14.2.3 employer's liability insurance for not less than (this information is contained in the exempt part of the report) per individual claim;

and undertakes to DevLLP and each HDV Party to maintain at all times such level of insurance cover in respect of the provision of the Services for the period of this Agreement (unless such other level of insurance is otherwise agreed by DevLLP acting reasonably having due regard to Good Industry Practice and insurance cover which is available in respect of the Services in the prevailing market but disregarding any increase in insurance premiums that arise as a result of the



acts, omissions, matters or things particular to the Development Manager which shall be deemed to be within commercially reasonable rates from time to time) (the "**Insurance Cover**").

14.3 In relation to its obligations to maintain Insurance Cover pursuant to Clause 14.2 (Indemnity and Professional Indemnity Insurance), the Development Manager shall:-

14.3.1 ensure that such insurance shall cover (inter alia) all liability hereunder upon customary and usual terms and conditions and containing such terms and conditions as are appropriate and in accordance with Good Industry Practice and with reputable insurers lawfully carrying out such insurance business in the United Kingdom and in each case shall not be subject to any material excess or unusual exclusions. The terms and conditions of such insurance shall be provided to DevLLP on each anniversary of the date of this Agreement and on request by DevLLP (in each case along with documentary evidence such insurance is in force);

14.3.2 not include any term or condition to the effect that the Development Manager must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 1930, or any amendment or re-enactment thereof;

14.3.3 not, without the prior approval in writing of DevLLP, settle or compromise with the insurers any claim which the Development Manager may have against the insurers, or by any act or omission lose or prejudice the Development Manager's right to make or proceed with such a claim against the insurers in each case insofar as such claim relates to the performance of Services under this Agreement;

14.3.4 if it becomes aware of any circumstances which ought to give rise to a potential claim under any insurance policy to promptly notify DevLLP; and

14.3.5 forthwith upon becoming aware of any circumstances which ought to give rise to a claim, undertake all actions necessary (including the provision of any information) to allow such claim to be processed and shall not do anything which may prejudice such claim.

14.4 The Development Manager shall notify DevLLP immediately upon:-

14.4.1 becoming or believing it may become unable to effect appropriate Insurance Cover and shall immediately explain the reasons for such inability;

14.4.2 becoming aware of its Insurance Cover becoming void or voidable by reason of an act or omission of the Development Manager; or

14.4.3 becoming aware that, as a result of an act or omission of the Development Manager, monies that would otherwise have been recoverable under such Insurance Cover are irrecoverable,

and, in such circumstances, DevLLP shall be entitled to determine this Agreement by notice in writing served on the Development Manager in accordance with Clause 11 (Duration and Termination) and the Development Manager shall be liable for any losses, costs, claims and/or proceedings arising out of any act or omission of the Development Manager which results in the Insurance Cover becoming void or voidable.

14.5 The Development Manager shall ensure that, prior to appointing any consultants, advisors and contractors pursuant to Clause 5.2.1 (Appointments by the Development Manager on behalf of DevLLP) of this Agreement, such consultants, advisors and contractors have insurance cover to a level and scope appropriate for the services to be carried out by the relevant consultant.

14.6 For the avoidance of doubt, the rights of DevLLP and each HDV Party in respect of claims for any losses, costs, claims and/or proceedings pursuant to this Clause 14 (Indemnity and Professional Indemnity Insurance) shall survive the termination of this Agreement.

14.7 Neither failure to comply nor full compliance with the insurance provisions in Clause 14 (Indemnity and Professional Indemnity Insurance) shall limit or relieve the Development Manager of its other liabilities and obligations under this Agreement.

14.8 If the Development Manager fails to comply with the requirements of this Clause 14 (Indemnity and Professional Indemnity Insurance), DevLLP (or the HDV) shall be entitled to recover from the Development Manager any premiums and other costs it incurs to effect suitable alternative insurance provision but this Clause 14.8 (Indemnity and Professional Indemnity Insurance) does not exclude any other remedy DevLLP or any HDV Party may have for breach of Clause 14 of this Agreement.

## 15. **INTELLECTUAL PROPERTY**

15.1 For the purpose of this Agreement, "Intellectual Property" shall mean all inventions (whether patentable or not) patents, utility models, designs (both registered or unregistered), copyright, work, trade and service marks (both registered and unregistered) together with all rights to the grant of and applications for the same and including all similar or analogous rights throughout the world and all future rights of such nature.

15.2 In consideration of the payment of one pound (£1.00), the receipt of which the Development Manager hereby acknowledges, the Development Manager grants (or if such grant cannot legally take place until a later date agrees to grant) to DevLLP and each HDV Party an irrevocable royalty-free, non-exclusive licence (such licences to remain in full force and effect notwithstanding the expiry or termination of this Agreement) to use and reproduce:

15.2.1 any Intellectual Property owned by the Development Manager as at the date of this Agreement and used by the Development Manager in the course of the provision of the Services; and

15.2.2 any Intellectual Property not yet in existence which may be created by the Development Manager in the course of the provision of the Services,

in each case, solely for such purposes as may be required in relation to the Development Sites, provided that where this Agreement terminates the licences granted pursuant to Clause 15.2 (Intellectual Property) shall only apply in respect of those Development Sites in relation to which the Development Manager has provided the Services prior to the date of termination of this Agreement. The Development Manager shall also allow DevLLP or any HDV Party to grant irrevocable, royalty free, non-exclusive sub-licences (such licences to remain in full force and effect notwithstanding the expiry or termination of this Agreement) of the Intellectual Property for the purposes of this Clause 15 (Intellectual Property).

15.3 The Development Manager warrants to DevLLP and each HDV Party that the use of the Intellectual Property in accordance with this Clause 15 (Intellectual Property) will not infringe the rights of any third party. The Development Manager shall use its reasonable endeavours to procure that provisions equivalent to Clauses 15.1 and 15.2 (Intellectual Property) are incorporated in full in favour of DevLLP and each HDV Party in any sub-contract under Clause 5.2.1 (Assignment and Appointment of Advisers and Agents) or Appointment by the Development Manager on behalf of DevLLP under Clause 5.2.1 (Appointments by the Development Manager on behalf of DevLLP). If the Development Manager is unable to procure the same in relation to any sub-contract or Appointment it shall notify DevLLP and shall not appoint the relevant Appointee without the prior written consent of DevLLP (such consent not to be unreasonably withheld).

15.4 The Development Manager shall not be liable for any use of the Intellectual Property by DevLLP or any HDV Party that is not in accordance with the licence granted in Clause 15.2 (Intellectual Property).

## 16. TUPE AND EMPLOYEES

### 16.1 Entry

16.1.1 It is the Parties' view that TUPE will not apply on the commencement of this Agreement.

### 16.2 Retendering

16.2.1 The Development Manager shall (and shall procure that any Sub-Contractor shall) within the period of twelve (12) months immediately preceding the expiry of this Agreement or following the service of a notice of termination under clause 11 or as a consequence of DevLLP notifying the Development Manager of its intention to retender this Agreement:

- (a) on receiving a written request from DevLLP provide in respect of any person engaged or employed by the Development Manager or any Sub-Contractor in the provision of the Services (the "**Assigned Employees**") full and accurate details regarding the identity, number, age, sex, length of service, job title, grade and terms and conditions of employment of and other matters affecting each of those Assigned Employees who it is expected, if they remain in the employment of the Development Manager or of any Sub-Contractor as the case may be until immediately before the expiry or earlier termination of this Agreement, would be Returning Employees (the Retendering Information);
- (b) provide the Retendering Information promptly and at no cost to DevLLP;
- (c) notify DevLLP forthwith in writing of any material changes to the Retendering Information promptly as and when such changes arise;
- (d) be precluded from making any material increase or decrease in the numbers of Assigned Employees other than in the ordinary course of business and with DevLLP's prior written consent (such consent not to be unreasonably withheld or delayed);
- (e) be precluded from making any increase in the remuneration or other change in the terms and conditions of the Assigned Employees other than in the ordinary course of business and with DevLLP's prior written consent (such consent not to be unreasonably withheld or delayed); and
- (f) be precluded from transferring any of the Assigned Employees to another part of its business or moving other employees from elsewhere in its or their business who have not previously been employed or engaged in providing the Services to provide the Services save with DevLLP's prior written consent (such consent not to be unreasonably withheld or delayed).

16.2.2 The Development Manager shall indemnify and shall keep indemnified in full DevLLP and at DevLLP's request any Future Service Provider against all Direct Losses arising from any claim by any party as a result of the Development Manager or Sub-Contractor failing to provide or promptly to provide DevLLP and/or any Future Service Provider where requested by DevLLP with any Retendering Information and/or Employee Liability Information or to provide full Retendering Information and/or Employee Liability Information or as a result of any material inaccuracy in or omission from the Retendering Information and/or Employee Liability Information.

### 16.3 Exit

16.3.1 The Parties acknowledge and agree that where all or part of the Services cease to be provided by the Development Manager (or any sub-contractor of the Development Manager) for any reason and where all or part of the Services continue to be provided by any Future Service Provider there may be a transfer of the Assigned Employees to the Future Service Provider pursuant to TUPE. If there is such a transfer, those Assigned Employees will be Returning Employees and the employment of those Returning

Employees shall transfer to the Future Service Provider in accordance with TUPE with effect from the transfer of their employment pursuant to TUPE (the "**Exit Transfer Date**").

16.3.2 The Development Manager shall indemnify DevLLP (both for itself, HDV and any replacement Development Manager) for any Direct Losses suffered or incurred by DevLLP, the Council, any HDV Party or any replacement Development Manager in connection with or as a result of:

- (a) any failure by the Development Manager or any Sub-Contractor to satisfy in full all wages, salaries and other benefits of the Returning Employees and all PAYE tax deductions and NI contributions relating thereto in respect of the Returning Employees up to the Exit Transfer Date;
- (b) any claim or demand by any of the Returning Employees arising before the Exit Transfer Date;
- (c) any failure by the Development Manager (or any sub-contractor) to comply with its or their obligations before the Exit Transfer Date under Regulations 13 and 14 of TUPE, or any award of compensation under Regulation 15 of TUPE, save where such failure arises from the failure of DevLLP or any replacement Development Manager to comply with its or their duties under Regulation 13 of TUPE before the Exit Transfer Date; and/or
- (d) any claim by any trade union or other body or person representing the Returning Employees arising from or connected with any failure by the Development Manager (or any sub-contractor) to comply with any legal obligation to such trade union, body or person before the Exit Transfer Date.

16.3.3 The Parties acknowledge and agree that at no time is it intended or likely that any of the Development Manager's (or any relevant sub-contractors) employees will transfer to HDV, DevLLP or the Council as a consequence of the expiry or earlier termination of this Agreement. If it is found or alleged that any Development Manager (or any relevant sub-contractors) employees do transfer to DevLLP, the HDV or the Council as a consequence of the expiry or earlier termination of this Agreement then:

- (a) DevLLP, the HDV or the Council may dismiss any or all of such employees with immediate effect at any time during the period of 30 days commencing with the expiry of the 14 days referred to (or any relevant Sub-Contractor) in clause 16.3.3(b) (the "**Indemnity Period**");
- (b) prior to any dismissal being effected in accordance with clause 16.3.3(a), DevLLP, the HDV Party or the Council will offer the Development Manager (or any relevant Sub-Contractor) a period of 14 days to make any of the Development Manager's employees a written offer of employment on such terms as the Development Manager (or any relevant Sub-Contractor) shall determine in its absolute discretion to procure that that employees withdraw any claim that their employment has transferred to DevLLP, the HDV Party or the Council (as applicable). DevLLP shall give all reasonable assistance requested by the Development Manager (or any relevant Sub-Contractor) to persuade such person to accept the offers; and
- (c) the Development Manager shall indemnify and keep indemnified DevLLP, the Council and the HDV Parties against all Direct Losses suffered or incurred by DevLLP, the HDV Party and/or the Council arising out of or in connection with the dismissal of any of the employees in accordance with clause 16.3.3(a) and the employment of any of the employees from the Exit Transfer Date up to the date of such dismissal.

#### 16.4 **Sub-Contractors**

In the event that the Development Manager enters into any Sub-Contract in connection with this Agreement, it shall impose obligations on its Sub-Contractors in the same terms as those imposed on it pursuant to this Part 1 and to Part 2 (Pensions) and shall procure that the Sub-Contractor complies with such terms. The Development Manager shall indemnify and keep DevLLP and/or the Council indemnified in full against all Direct Losses incurred by DevLLP and/or the Council or any Future Service Provider as a result of or in connection with any failure on the part of the Development Manager to comply with this clause and/or the Sub-Contractor's failure to comply with such terms.

#### 17. **KEY PERFORMANCE INDICATORS**

The provisions of Schedule 6 (Key Performance Indicators) shall apply.

#### 18. **CORPORATE POWERS AND OTHER UNDERTAKINGS AND WARRANTIES**

18.1 Each of the Parties hereby represents and warrants to the other as follows:-

- 18.1.1 that it has full corporate power and has taken all necessary corporate action to enable it effectively to enter into and perform its obligations under this Agreement;
- 18.1.2 that this Agreement, when executed by all Parties, will create obligations which are valid and binding on it, and enforceable in accordance with their terms; and
- 18.1.3 it does not require the consent, approval or authority of any other persons to enter into or perform its obligations under this Agreement and its entry into and performance of this Agreement will not constitute any breach of or default under any contractual, governmental or public obligation binding upon it as at the Commencement Date.

#### 19. **CONFIDENTIALITY**

19.1 Subject to Clause 19.2 (Confidentiality), the Parties shall be bound by the provisions of clause 32 (*Confidential Information and Freedom of Information*) of the Members' Agreement as if they were parties thereto.

19.2 The Development Manager may disclose information to its employees or advisers where the Development Manager deems such disclosure to be necessary for providing the Services in accordance with the terms and conditions of this Agreement subject to the confidentiality obligations set out in clause 32 of the Members' Agreement.

#### 20. **DATA PROTECTION**

20.1 The Development Manager shall ensure that:-

- 20.1.1 it has all appropriate regulations, licences and authorities required under the Data Protection Act 1984 or the Data Protection Act 1998, as applicable (each the "**Relevant DP Act**") to enable it to perform its obligations under this Agreement; and
- 20.1.2 it obtains and processes personal data (within the meaning of the Relevant DP Act) in accordance with the data protection principles under the Relevant DP Act and generally in accordance with the Relevant DP Act.

#### 21. **NOTICES**

21.1 Any demand, notice, agreement or other communication given or made under or in connection with this Agreement shall be in accordance with this Clause 21 (Notices).

21.2 Subject to Clause 21.4 (Notices), any communication between DevLLP or HDV (as applicable) and the Development Manager in the performance of this Agreement shall be made electronically. All such electronic communication shall be sent to the electronic mail address of a representative of

the Development Manager (as notified from time to time by the Development Manager to DevLLP) and to the electronic mail address of a representative of DevLLP (as notified from time to time by DevLLP to the Development Manager) only. No communication shall be made directly with HDV. This shall include a requirement that, to the extent achievable, any information which is to be provided by DevLLP to the Development Manager in the performance of its Services shall be provided electronically. Where either Party so requires it any such electronic correspondence shall be followed with non electronic written copies which shall be posted to the receiving Party.

21.3 DevLLP shall be responsible for all communication with the Development Manager on behalf of DevLLP and HDV and shall issue a copy of any communication/notice received to HDV where required.

21.4 Where any notices or demands are to be served in accordance with this Agreement which are more formal than day to day correspondence and communication, then such notices or demands shall be made in writing, served in non electronic format and duplicated electronically to the Development Manager and/or DevLLP (in relation to DevLLP or HDV as applicable) to the electronic mail address of a representative of the Development Manager (as notified from time to time to DevLLP and the Council) and to the electronic mail address of a representative of DevLLP (as notified from time to time by DevLLP to the Development Manager). In these circumstances, notice will be deemed to have been duly given or made:-

21.4.1 if sent by prepaid first class post, on the second Business Day after the date of posting;  
or

21.4.2 if delivered by hand, upon delivery at the address provided for in Clause 21.5 (Notices), provided however that, if it is delivered by hand on a day which is not a Business Day or after 4.00 pm in the place of receipt on a Business Day, it will instead be deemed to have been given or made on the next Business Day.

21.5 Any such demand, notice or other communication will be addressed, in the case of service by post or delivery by hand, to the recipient's address set out in this Agreement (or at such other address as may from time to time be notified in writing by the recipient to the sender as being the recipient's address for service).

## 22. **NO PARTNERSHIP**

Nothing in this Agreement constitutes a partnership or a joint venture between either of DevLLP or HDV and the Development Manager or the DM Guarantor.

## 23. **VARIATIONS**

23.1 Any additions, amendments and variations to this Agreement shall be binding only if in writing and signed by the duly authorised representatives of DevLLP, HDV, the Development Manager and the DM Guarantor (in non electronic format).

23.2 This Agreement supersedes any previous agreements or arrangements between the Parties in respect of the Services and represents the entire understanding and agreement between the Parties in relation thereto.

## 24. **COUNTERPARTS**

This Agreement may be executed in the form of two or more counterparts, each executed by one or more of the Parties but, provided that if all Parties shall so enter the Agreement, each of the executed counterparts shall be deemed to be an original but, taken together, they shall constitute one document.

## 25. **THIRD PARTY RIGHTS**

25.1 Except as provided for in Clause 25.2 (Third Party Rights) a person who is not party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce

any term of this Agreement. This Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

25.2 The Parties to this Agreement acknowledge that in entering into this Agreement they intend that the following beneficiaries will be entitled to enforce the following provisions of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999:-

25.2.1 the HDV Parties and the Council shall be entitled to enforce all provisions of this Agreement;

25.2.2 any Associated Third Party shall be entitled to enforce Clause 16 (TUPE and Employees) of this Agreement.

## 26. **RESTRICTIONS**

The Development Manager shall not and shall procure that no member of the Development Manager Group shall during, the term of this Agreement, and thereafter, until the expiry of three (3) calendar years following the winding up of DevLLP, intentionally do or omit to do anything to bring the standing of any HDV Party and/or the Council (and/or any other Member) into material disrepute or to attract material adverse publicity for any HDV Party or the Council.

## 27. **INVALIDITY AND SEVERANCE**

If at any time any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that shall not affect or impair the legality, validity or enforceability in that jurisdiction, or any other jurisdiction, of any other provision of this Agreement.

## 28. **ASSIGNMENT AND NOVATION**

28.1 DevLLP shall be entitled to assign or novate at any time any of its rights and obligations under this Agreement to any of the HDV Parties without the consent of the Development Manager.

28.2 HDV shall be entitled to assign or novate at any time any of its rights and obligations under this Agreement to any of the HDV Parties without the consent of the Development Manager.

28.3 The rights and obligations of the Development Manager under this Agreement are personal only and shall not be capable of assignment or novation.

## 29. **GOVERNING LAW AND JURISDICTION**

29.1 This Agreement shall be governed by and construed in accordance with the laws of England.

29.2 The Parties agree that the courts of England are to have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Agreement (whether of a contractual or tortious nature or otherwise) and submit to the jurisdiction of those courts.

**EXECUTED AS A DEED** by or on behalf of the Parties on the date which first appears in this Agreement.

**EXECUTED** and **DELIVERED** as a deed on the )  
date hereinbefore first mentioned by **[DEVLLP]** )  
acting by its designated members:- )

**EXECUTED** and **DELIVERED** as a deed on the )  
date hereinbefore first mentioned by )  
**[LENLEASE DEVELOPMENT (EUROPE)** )  
**LIMITED]** acting by a director: )

Director .....

Witness Signature .....

Witness Name .....

Witness Address .....

.....

.....

DRAFT



## SCHEDULE 1

*[PMDN: Definitions to be re-reviewed and finalised following CFA and delegations policies having been developed]*

### DEFINITIONS AND INTERPRETATION

#### 1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement (including in the Schedules), the following words, expressions and meanings shall, unless the context otherwise requires and/or save where expressed otherwise, have the meanings set opposite them and words and expressions which are not defined in this Agreement but are capitalised shall have the meanings ascribed to them in the Members' Agreement:-

|  |  |
|--|--|
| <b>"Affected Party"</b>                      | has the meaning given to it in Clause 13.1 (Force Majeure)   |
| <b>"Agreement"</b>                           | means this deed (including any Schedule to it), as amended, varied, supplemented or replaced from time to time in accordance with its terms  |
| <b>"Appointee"</b>                           | has the meaning given to it in Clause 5.2.1 (Appointments by the Development Manager on behalf of DevLLP)  |
| <b>"Appointment"</b>                         | has the meaning given to it in Clause 5.2.1 (Appointments by the Development Manager on behalf of DevLLP)  |
| <b>"Approved Budget"</b>                     | means the budget for the delivery of a Development Site as set out in the Development Business Plan for the relevant Development Sites as approved by the Members  |
| <b>"Board"</b>                               | means the board of nominees of each of the HDV Parties (as applicable)   |
| <b>"Borough"</b>                             | means the geographical area of the London Borough of Haringey from time to time  |
| <b>"Business"</b>                            | means the business of DevLLP as more particularly defined in the Members' Agreement  |
| <b>"Business Day"</b>                        | means 9.00 am to 5.00 pm on any day (other than a Saturday) on which clearing banks in the City of London are open for the transaction of normal sterling banking business and <b>"Business Days"</b> shall be construed accordingly   |
| <b>"Business Plans"</b>                      | has the meaning given to it in the Members' Agreement  |
| <b>"Certificate of Practical Completion"</b> | means the certificate of practical completion issued by [DevLLP's] Architect or the written statement of practical completion issued by the Employer's Representative under the relevant Building Contract (as appropriate)  |
| <b>"Commencement Date"</b>                   | means the date of this Agreement   |
| <b>"Confidential Information"</b>            | means all information whether in writing, electronic or data form or otherwise (including but not limited to know-how) (not in the public domain otherwise than as a consequence of a breach by the Development Manager of its obligations under this Agreement) which may be imparted in confidence or be of a confidential nature relating to the Business or plans or internal affairs of HDV, DevLLP or the Council including but without limitation, all information of a confidential nature relating to the |

|   |   |
|---|---|
|   | Developments, marketing information, unpublished information relating to the Business, to HDV, DevLLP or the Council or to any actual or potential customer, tenant or landlord or supplier or officer or employee of HDV, DevLLP or the Council              |
| <b>"Contractor"</b>                                 | means any contractor appointed by the Development Manager to carry out the Development Works  |
| <b>"Contractor Framework Agreement"</b>             | has the meaning given to it in the Members' Agreement   |
| <b>"Deadlock Matter"</b>                            | has the meaning given to it in the Members' Agreement   |
| <b>"Delegation Policy"</b>                          | means the delegation policy set out in Schedule 3 of the Members' Agreement   |
| <b>"Development"</b>                                | means any development of a Development Site or part of a Development Site to be carried out by or on behalf of DevLLP from time to time   |
| <b>"Development Appraisal"</b>                      | means a development appraisal in the form deemed by the Development Manager as appropriate (and agreed with DevLLP) for the type of development envisaged   |
| <b>"Development Business Plan"</b>                  | has the meaning given to it in the Members' Agreement   |
| <b>"Development Framework Agreement"</b>            | has the meaning given to it in the Members' Agreement   |
| <b>"Development Manager's Employees"</b>            | those persons employed by the Development Manager (or any Sub-contractors of the Development Manager) wholly and/or mainly in the provision of the Services immediately before the Transfer Date  |
| <b>"Development Management Agreement Guarantee"</b> | means the guarantee entered into on or around the date of this Agreement to be provided by the DM Guarantor to DevLLP, guaranteeing the obligations of the Development Manager pursuant to this Agreement   |
| <b>"Development Management Fee"</b>                 | is the fee as set out in Schedule 4   |
| <b>"Development Sites"</b>                          | has the meaning given to it in the Members' Agreement   |
| <b>"Development Works"</b>                          | means the carrying out and completion of the development on the relevant Development Site (or Phase within a Development Site)  |
| <b>"DevLLP's Architect"</b>                         | means in respect of each Development Site such appropriately qualified, experienced and competent firm or company of architects as may be appointed by the relevant HDV Party   |
| <b>"DevLLP Member Meetings"</b>                     | means meetings of the Members in accordance with the Members' Agreement   |
| <b>"Direct Losses"</b>                              | means all damages, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on an indemnity basis) proceedings, demands and claims whether arising under statute, contract or at common |

|  |   |
|--|---|
|  | law but excluding Indirect Losses   |
| <b>"Employee Liability Information"</b>  | means the information which a transferor is obliged to notify to a transferee pursuant to Regulation 11(2) of TUPE  |
| <b>"Employer's Representative"</b>       | means such appropriately qualified, experienced and competent firm or company of quantity surveyors or project Development Managers as may be nominated by DevLLP   |
| <b>"Expert"</b>                          | has the meaning ascribed to it in the Members' Agreement  |
| <b>"Force Majeure Event"</b>             | means the occurrence after the Commencement Date of:- <ul style="list-style-type: none"> <li>(a) war, civil war, armed conflict or terrorism;</li> <li>(b) lightning, earthquake, fire, flood, storm or extreme weather condition;</li> <li>(c) nuclear, chemical or biological contamination unless the source or the cause of the contamination is the result of the actions of or breach by the Development Manager or its Sub-contractors; or</li> <li>(d) pressure waves caused by devices travelling at supersonic speeds.</li> </ul> |
| <b>"Finance Services User Agreement"</b> | means an agreement to be entered into between HDV and the Development Manager (or such other person procured by the Development Manager) as regards the provision of day to day finance services to HDV including payment and receipt processing and services such as credit checks on potential suppliers  |
| <b>"Future Service Provider"</b>         | means each and every service provider who shall provide any service equivalent to any of the Services immediately after expiry or earlier termination of this Agreement but excluding HDV, DevLLP and the Council   |
| <b>"Good Industry Practice"</b>          | means such practice as may be expected of a properly qualified, competent and experienced development manager accustomed to carrying out services of the same or a similar nature, scope and complexity to the Services in relation to developments of a similar nature, scope, complexity and size as the Development Sites, such practice to be carried out in a proper, prompt and business like manner using all the skill, expertise and attention as is to be expected of such a development manager                                  |
| <b>"Group"</b>                           | means in relation to the Development Manager:- <ul style="list-style-type: none"> <li>(a) the Development Manager</li> <li>(b) any company which in relation to the Development Manager is a Subsidiary or a Holding Company or a Subsidiary of such Holding Company; and</li> <li>(c) any company or Subsidiary of a company where at least one fifth of the issued equity share capital is beneficially owned by the Development Manager, or any person referred to above (whether or not a company)</li> </ul>                           |

and means in relation to the PSP:

- (i) the PSP;
- (ii) any company which in relation to the PSP is a Subsidiary or a Holding Company or a Subsidiary of such Holding Company; and
- (iii) any company or Subsidiary of a company where at least one fifth of the issued equity share capital is beneficially owned by the PSP, or any person referred to above (whether or not a company)

provided that for the purposes of this definition any references to companies shall be interpreted as including limited liability partnerships and the definitions of "Subsidiary" and "Holding Company" shall be such that any references to companies therein shall include references to limited liability partnerships

|  |  |
|--|--|
| <b>"Guarantor"</b>                               | means Lendlease Europe Holdings Limited (Company No. 02594928) of 20 Triton Street, Regent's Place, London NW1 3BF   |
| <b>"Guidance"</b>                                | means any applicable industry standard guidance or industry standard directions which relate to the Services   |
| <b>"HDV"</b>                                     | means the Haringey Development Vehicle LLP   |
| <b>"HDV Board"</b>                               | has the meaning given to it in the Members' Agreement  |
| <b>"HDV Business Plan"</b>                       | has the meaning given to it in the Members' Agreement  |
| <b>"HDV Financial Model"</b>                     | means the Microsoft Excel based financial appraisal tool adopted by HDV from time to time in accordance with the HDV Business Plan   |
| <b>"HDV Objectives"</b>                          | has the meaning given to it in the Members' Agreement  |
| <b>"HDV Land Assembly Strategy"</b>              | means the strategy for assembling land to enable Development to take place in accordance with the HDV Business Plan  |
| <b>"HDV Party"</b>                               | has the meaning given to it in the Members' Agreement  |
| <b>"HDV Stakeholder and Engagement Strategy"</b> | means the strategy for stakeholder engagement adopted in accordance with the Business Plan from time to time   |
| <b>"Holding Company"</b>                         | has the meaning given to it in section 1159 of the Companies Act amended to include any limited liability partnership which would fall within that meaning if it were a company                    |
| <b>"ICT"</b>                                     | means information and communications technology  |
| <b>"ICT User Agreement"</b>                      | means an agreement to be entered into between HDV and the Development Manager (or such person as the Development Manager shall procure) as regards the day to day provision of ICT services to HDV |
| <b>"Indirect Losses"</b>                         | means loss of profit, loss of use, loss of production, loss of business, loss of business opportunity or any claim for consequential loss or for indirect loss of any nature but                   |

|                                     |   |
|-------------------------------------|---|
|                                     | excluding any of the same that relate to loss of revenue under this Agreement   |
| <b>"Insurance Cover"</b>            | has the meaning given to it in Clause 14.2 (Indemnity and Insurance)  |
| <b>"Insurance Terms"</b>            | means the terms and conditions of the insurance policies in force in relation to the Development Manager  |
| <b>"Intellectual Property"</b>      | has the meaning given to it in Clause 15.1 (Intellectual Property)  |
| <b>"Key Personnel"</b>              | has the meaning given in Clause 2.4 (Appointment of the Development Manager) and as set out in Schedule 4   |
| <b>"Key Services"</b>               | means those Development Manager Services set out in paragraphs [1 to 17 (inclusive)] <sup>1</sup> of Part A of Schedule 2 (Services)  |
| <b>"Land Assembly Agreement"</b>    | means the agreement dated on or around the date of this Agreement between (1) the Council and (2) HDV   |
| <b>"Law"</b>                        | means any applicable Act of Parliament, sub-ordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, bye-law, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any regulatory body which the Development Manager is bound to comply with and/or which relate to or affect the Service |
| <b>"Members"</b>                    | means the members of the HDV from time to time and <b>"Member"</b> shall be construed as referring to one of them as the context may require  |
| <b>"Members' Agreement"</b>         | means the Members' Agreement dated on or around the date of this Agreement and entered into between (1) the Council (2) [PSP]; (3) [HDV]; (4) [InvLP]; (5) [DevLLP]; (6) [Nominee Co]; and (7) PSP Guarantor as such agreement may be varied or supplemented from time to time  |
| <b>"Monthly Performance Report"</b> | a performance report showing performance of the Development Manager against the Development Business Plan and including an update on expenditure since the preceding Monthly Performance Report (or in the case of the first Monthly Performance Report since the Commencement Date)  |
| <b>"Monthly Time Sheet"</b>         | means the time sheet to be completed by the Development Manager   |
| <b>"Objectives"</b>                 | means the objectives of DevLLP as more particularly defined in the Members' Agreement   |
| <b>"Phase"</b>                      | has the meaning given to it in the Members' Agreement   |
| <b>"Planning Application"</b>       | has the meaning given to it in the Development Framework Agreement  |

<sup>1</sup> Subject to confirmation once Services Schedule is settled.

|                                  |  |
|----------------------------------|--|
| <b>"Plot"</b>                    | [has the meaning given to it in the Contractor Framework Agreement]  |
| <b>"Practical Completion"</b>    | means, in respect of each Development Site or Phase, the date on which the last of the anticipated Certificate of Practical Completion is issued in accordance with the Building Contract(s) in respect of that Development Site or Phase  |
| <b>"Procurement Policy"</b>      | means the procurement policy set out in Schedule 4 of the Members' Agreement   |
| <b>"Professional Team"</b>       | means the relevant consultants and professionals appointed by the Development Manager  |
| <b>"Project Agreements"</b>      | has the meaning given to it in the Members' Agreement  |
| <b>"Quarter"</b>                 | means each calendar period of 3 months during the continuance of this Agreement ending on 31 July, 30 October, 31 January and 30 April in each year and <b>"Quarterly"</b> shall be construed accordingly  |
| <b>"Quarterly Board Report"</b>  | means the report required to be produced by the Development Manager to the DevLLP Board in accordance with paragraph 3.1 of Schedule 6   |
| <b>"Relevant DP Act"</b>         | has the meaning given to it in Clause 20.1.1 (Data Protection Act)   |
| <b>"Relevant Quarter"</b>        | has the meaning given to it in Clause 3.3.5 (Obligations and Duties of the Development Manager)  |
| <b>"Resource Budget"</b>         | shall have the meaning in Clause 4.2 (Resource Plan)   |
| <b>"Resource Plan"</b>           | means the resource plan for the delivery of the Services in respect of each Development Site to be produced by the Development Manager and approved by Dev LLP in accordance with the provisions of clause 4 and Schedule 3 and as may be updated from time to time  |
| <b>"Returning Employees"</b>     | means those persons who were employed by the Development Manager and/or any Sub-Contractor wholly and/or mainly in the Services immediately before the Exit Transfer Date whose contract of employment becomes, by virtue of the application of TUPE in relation to the expiry or earlier termination of this Agreement, a contract of employment with any Future Service Provider |
| <b>"Services"</b>                | means the services outlined in Schedule 2 (Services) to be provided to DevLLP (and any other services as may be agreed between DevLLP and the Development Manager from time to time) to be delivered in accordance with this Agreement   |
| <b>"Site"</b>                    | shall have the meaning given to it in the Members' Agreement   |
| <b>"Stages"</b>                  | means the various stages of the Project as set out in Schedule 2;  |
| <b>"Project Appraisal"</b>       | means the Development Appraisal produced in accordance with Schedule 2 (Services)  |
| <b>" Project Appraisal Sign-</b> | means the Board approval given in accordance with paragraph 2  |

|                                 |  |
|---------------------------------|--|
| <b>Off"</b>                     | of Schedule 2 (Services)   |
| <b>"Sub-Contractor"</b>         | means any sub-contractor appointed by the Development Manager to perform any part of the Services  |
| <b>"Subsidiary"</b>             | save where expressly extended or it is stated to the contrary in this Agreement, has the meaning ascribed to it in section 1159 of the Companies Act 2006 and includes any limited liability partnership which would fall within that meaning if it was a company  |
| <b>"Target Completion Date"</b> | means the dates agreed as such in the Development Business Plan  |
| <b>"Termination Date"</b>       | means the date at which this Agreement terminates or expires (howsoever arising)   |
| <b>"Termination Event"</b>      | shall have the meaning given to it in the Members' Agreement   |
| <b>"Transfer Date"</b>          | the date or dates on which there is a transfer of responsibility for the provision of the Services or part of the Services between the Development Manager and a replacement service provider and/or HDV and/or DevLLP and/or the Council  |
| <b>"TUPE"</b>                   | means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time and/or any other regulations enacted for the purpose of implementing the Acquired Rights Directive (Council Directive 77/187/EEC as amended by Council Directive 98/50/EEC and consolidated in Council Directive 2001/23/EEC) into English Law |
| <b>"VAT"</b>                    | means Value Added Taxes provided for in the Value Added Taxes Act 1994   |

1.2 Clause 1.2 of the Members' Agreement shall apply *mutatis mutandis* to this Agreement.

## SCHEDULE 2

### SERVICES<sup>23</sup>

#### PART A

**[PMDN: Services need to specify an obligation on the DM to identify any areas within a new Business Plan that are material or are a financial commitment requiring approval by Members]**

#### DEVELOPMENT MANAGER SERVICES (OTHER THAN PROJECT MANAGER SERVICES)

##### 1. Overarching

- 1.1 The Development Manager shall carry out and complete the Services listed below and all such other services as are reasonably incidental to or reasonably flow from those set out below.
- 1.2 The DM is the single point of management for the delivery of the Phase or Plot which is intended to be delivered in accordance with the Business Plan.
- 1.3 Without prejudice to the other provisions of this Agreement, the Development Manager shall carry out the Services in accordance with the terms of this Agreement and in such a manner as to achieve the HDV Objectives and any objectives contained within any agreed Business Plan, and shall:-
  - 1.3.1 prepare and maintain the HDV Business Plan and Development Business Plans and identify improvements and value enhancement opportunities in the properties;
  - 1.3.2 formulate proposals for such opportunities including development appraisals, cashflow forecasts;
  - 1.3.3 procure and implement the Board approved sales and marketing strategy; and
  - 1.3.4 obtain HDV/DevLLP approval to all capital expenditure in accordance with the Delegation Policy.

##### 2. Strategy and General

- 2.1 Providing progress reports on the Development Manager's activities in respect of the properties to DevLLP, such progress reports to:
  - 2.1.1 be provided on a monthly basis, unless otherwise requested by DevLLP; and
  - 2.1.2 contain a content to be agreed from time to time, but as a minimum to include an update on marketing activity (including occupier interest) and Business Plan progress (including progress against target completion dates in the Business Plans),  
  
in accordance with paragraph 3 (Reporting).
- 2.2 Attending Board meetings of DevLLP.
- 2.3 Providing presentations regarding ongoing activity at Board meetings of DevLLP.
- 2.4 Maintaining the cashflow model.

<sup>2</sup> Note Services to be updated prior to signature to reflect any references in any other documents to DM Services including the Contractor Framework Agreement.

<sup>3</sup> Scope of services for the IVT to be attached as a schedule to the DMA.



2.5 Undertaking day-to-day operational management of HDV/DevLLP, with authority for operational expenditure in accordance with the Delegation Policy.

2.6 Complying with HDV/DevLLP policies.

### 3. **Reporting**

3.1 Providing reports to DevLLP quarterly (unless otherwise requested by DevLLP) and in a format to be agreed with the DevLLP Board from time to time. Such reports to include:-

a breakdown of capital expenditure and receipts during the previous quarter, including written commentary regarding:-

- (a) ongoing projects (i.e. those where HDV/DevLLP is legally committed);
- (b) those projects which have become legally committed during the previous quarter;
- (c) those projects which are in the discussion stage; and
- (d) those projects which are either under offer, for sale, or proposed to be sold.

#### 3.1.2 Development Manager Performance

a review of the performance of the Development Manager in accordance with the Business Plans and the target completion dates and such other performance review parameters as may be agreed with DevLLP from time to time; and

3.2 The Development Manager will also be required to contribute as reasonably required by HDV/DevLLP in respect of its annual report and accounts.

3.3 The Development Manager will provide to DevLLP monthly cashflow schedules showing the monthly anticipated cashflow over the period covered by monthly budget forecasts.

3.4 Subject to the Delegation Policy, checking and signing off all invoices payable by DevLLP, and if correct sending them to the appointed representative for payment.

3.5 Providing such information and reporting as HDV/DevLLP, its Board or the Members shall reasonably require to allow them to fulfil their obligations and make informed decisions (including alerting HDV/DevLLP to proposed financial commitments contained in draft Business Plans).

3.6 Producing the Business Plans in accordance with the Business Plan criteria on an annual basis with a half yearly review / update (and such further updates as may be required pursuant to the terms of the Members' Agreement) and providing such Business Plans to HDV/DevLLP for its approval.

3.7 Procuring the provision to HDV/DevLLP of a financial model and updating it in line with the Business Plans on a half yearly basis and for actual expenditure on a quarterly basis.

### 4. **Design of the Properties and the Approved Plans**

Advise as to the design of the properties and review designs for the properties with reference to considerations of commercial viability, efficiency, economy and suitability for sale or lease.

### 5. **Negotiation of Additional Consents**

5.1 Save where an alternative strategy to deal with the relevant matters is agreed with DevLLP negotiate and document the terms of agreements with the owners and occupiers of neighbouring property for the acquisition of additional land or rights, the release of rights of way, light and air or otherwise and the extinguishment of interests in, over or with respect to the properties to the extent that such additional land or rights are required for the properties or such rights and interests would

be infringed by the development of the properties or would prevent or impede the carrying out or progress of the development of the properties or their use and enjoyment.

- 5.2 Save where an alternative strategy to deal with the relevant matters is agreed with DevLLP use reasonable endeavours to procure the grant to DevLLP of all rights necessary for any of the works which are required to be executed outside the boundaries of the properties and negotiate and document any necessary rights of light agreements, party wall agreements or awards, schedules of condition and agreements relating to the use and maintenance of any areas to be used in common with adjoining owners and occupiers, subject to the approval by DevLLP of the final terms of such agreements.

6. **VAT**

Providing such assistance as is reasonably required by DevLLP or a third party consultant in making VAT elections, filing VAT returns and in dealing with any other VAT related issues.

7. **Outgoings**

Notify DevLLP of any demands for payment of rates, taxes, outgoings, duties, charges, assessments or other impositions assessed upon, or payable in respect of the occupation and/or use of the properties.

8. **Notification and Easement of Encroachments to the Properties**

Notify DevLLP of any new or additional easement being acquired or any physical encroachment being made by any third party which affects the properties and on DevLLP's behalf take all steps reasonably required by DevLLP to prevent any such easement or encroachment.

9. **Provision of all Information**

- 9.1 Keep DevLLP informed of all material measures taken and stages reached by the Development Manager in performing its obligations.

- 9.2 Supply to DevLLP on its request such information as DevLLP may reasonably require to satisfy itself that the Development Manager is complying with its obligations under this Agreement.

10. **Cost control and development options**

- 10.1 Where there are material changes to the proposals revise the Business Plans, submitting each revision to DevLLP for approval.

- 10.2 Advise upon alternative occupancy and building options to maximise value for DevLLP.

- 10.3 Agree a budget and cash flow plan for the development of a property and establish profit and cost monitoring and cost control procedures and report to DevLLP monthly upon such matters.

- 10.4 Maintain and update the financial model and make it available for inspection by DevLLP at all reasonable times and on reasonable notice.

11. **DEVELOPMENT OF PROPERTIES**

(this information is contained in the exempt part of the report)

12. **INSURANCE MANAGEMENT**

- 12.1 Submit to DevLLP for approval recommendations as to the appropriate responsibilities of all concerned in relation to the insurance of the works with a view to ensuring that responsibility for effecting all appropriate insurances is clearly defined and avoiding conflicting insurance arrangements.

- 12.2 Effect and maintain such insurances as are to be the responsibility of the Development Manager.

13. **LIAISON WITH TENANTS**

- 13.1 Assist the Council in its obligation under the Development Framework Agreement and the Land Assembly Agreement to negotiate the terms of such agreements as are required with the tenant of any properties on the properties to enable the works to be implemented, including for the variation of any rights and reservations in the leases of the any adjoining land.
- 13.2 So far as practicable take account of the concerns and representations of occupiers of any adjoining land, and keep DevLLP fully and regularly informed of any dissatisfaction expressed by any tenant during the progress of the works.

14. **HANDOVER AND OCCUPATION SERVICE**

At practical completion, in conjunction with the employer's representative, co-ordinate handover and see that all appropriate inspections and tests are made.

15. **LETTING & SALES MANAGEMENT**

- 15.1 Manage the letting and sale of the relevant parts of the properties in accordance with the Business Plans on behalf of DevLLP.
- 15.2 Agreeing with Members and the Council (where required) disposals of the property owned by DevLLP.
- 15.3 Managing negotiations with potential purchasers to ensure the best price in accordance with parameters agreed with DevLLP.
- 15.4 Monitoring of successful bids through to completion.
- 15.5 Advising throughout the sale process on the most effective methods to achieve the best price reasonably attainable.
- 15.6 Monitoring and assisting solicitors in the preparation of any pre-contract sales enquiries and the negotiation of contracts and completion documentation.
- 15.7 Assisting in the answering of all property questions raised by prospective purchasers.
- 15.8 Liaising with and assisting selling agents in the preparation of sales particulars, sales brochures and information necessary for the same.
- 15.9 Co-ordinating of leasing strategy within confines of the Business Plans and parameters agreed with DevLLP.
- 15.10 In accordance with parameters agreed with DevLLP and in accordance with the Procurement Policy, appointing consultants where required following practical completion of the developments to perform functions, including:
- 15.10.1 letting agents;
  - 15.10.2 letting solicitors;
  - 15.10.3 sales agents; and
  - 15.10.4 sales solicitors.
- 15.11 Enforcing lease obligations, including in respect of repair and maintenance, health and safety and insurance.
- 15.12 Pursuing policies to reduce voids and enhance rental returns.

- 15.13 When a letting or sale has been approved by DevLLP they shall instruct their solicitors to negotiate and prepare for exchange an agreement for lease or freehold transfer to give effect to the letting or sale as quickly as reasonably practicable and the Development Manager shall provide all such assistance as DevLLP and its solicitors may reasonably require in relation to the legal negotiations.

16. **FUNDING MANAGEMENT**

- 16.1 Manage the HDV/DevLLP fund raising (whether by way of debt or equity investment) in accordance with the Members' Agreement and the Business Plans.
- 16.2 Co-ordinate and secure appropriate taxation advice in relation to any funding options or disposals of or partnering arrangements regarding the Project.
- 16.3 Make recommendations to the HDV/DevLLP on the appropriateness and feasibility of entering into any development partnering arrangements in relation to the Project.
- 16.4 Report to the HDV/DevLLP on the terms of any proposed funding arrangements.
- 16.5 Recommend solicitors to the HDV/DevLLP and on approval from the HDV/DevLLP instruct solicitors and other appropriate professionals as required to negotiate and agree the terms of any funding documentation and manage and co-ordinate all legal due diligence and similar processes required to complete any funding transaction and satisfy any conditions relating thereto.
- 16.6 Monitor the financial covenants and warranties under any of the HDV/DevLLP's finance documents and advise the HDV/DevLLP on the status of such compliance.
- 16.7 Assist the HDV/DevLLP with any proposed drawdown under any of the HDV/DevLLP's finance documents.
- 16.8 Prepare and deliver all reports required by the HDV/DevLLP's banks.
- 16.9 Deal with the day to day relationship with the HDV/DevLLP's banks

17. **FINANCIAL MANAGEMENT**

- 17.1 Record and maintain all such financial records and information as are required to enable the preparation of the financial information in accordance with the requirements of the Members' Agreement and to prepare such information as is required to enable the HDV/DevLLP to comply with any of its reporting obligations under the Members' Agreement.
- 17.2 Submit to the HDV/DevLLP, prior to any meeting of the relevant Board such that information can be included in the relevant Board pack to be provided to the Board pursuant to the Members' Agreement, all financial information required to monitor the finances of the Project together with all necessary supporting documentation to enable the Board to take informed decisions in relation to the Project.
- 17.3 Review, update and report variances and, as necessary, propose variations to each item of financial information which has been previously submitted to or approved by the HDV/DevLLP.
- 17.4 Review and propose to the HDV/DevLLP variations and updates to the financial information for review in accordance with the Business Plans and in order to reflect any economic changes or changes in market conditions.
- 17.5 Operate and maintain agreed and compliant day to day accounting procedures for the HDV/DevLLP.
- 17.6 Arrange for and provide information and data required for property and other valuations, audits and the preparation of all financial accounts for the HDV/DevLLP.
- 17.7 Prepare management accounts and provide to the HDV/DevLLP's accountants or auditors (as appropriate) all such information to enable the preparation of the final or audited accounts for

submission to and approval by the Board in accordance with the requirements of the Members' Agreement.]

**18. GOVERNANCE, COMPLIANCE AND SECRETARIAT FUNCTIONS**

- 18.1 Monitor compliance by the HDV/DevLLP with any legal and/or regulatory requirements.
- 18.2 Supervise the HDV/DevLLP's audit process.
- 18.3 Ensure compliance by the HDV/DevLLP of all its tax matters including:
  - 18.3.1 Administering the HDV/DevLLP's SDLT obligations and keeping the HDV/DevLLP fully informed of any SDLT matter;
  - 18.3.2 Administering the HDV/DevLLP's VAT matters and ensuring all VAT returns are prepared and submitted;
  - 18.3.3 Administering the HDV/DevLLP's Construction Industry Scheme matters and ensuring all sub-contractors for the purposes of the Construction Industry Scheme are verified prior to any payment for services;
  - 18.3.4 Ensuring all relevant tax returns and computations are prepared and submitted by the HDV/DevLLP.
- 18.4 Establish, maintain and operate the HDV/DevLLPs':
  - 18.4.1 records;
  - 18.4.2 books of accounts;
  - 18.4.3 registered office; and
  - 18.4.4 principal place of business.
- 18.5 Serve all relevant notices which, in accordance with the Members' Agreement, are to be served on any of the parties thereto.
- 18.6 Take and produce the minutes of meetings of the HDV/DevLLP, which shall include minutes of the Board and any committee (including any executive committee).
- 18.7 Ensure the giving of any notices required to be given or filings required to be made or advertisements required to be placed pursuant to any statute or law in respect of the HDV/DevLLP or the Project.
- 18.8 Instruct and assist the accountants appointed by the HDV/DevLLP to produce year end accounts in relation to the HDV/DevLLP in sufficient time as to enable the HDV/DevLLP to comply with its statutory obligations in relation to audits, annual accounts and tax returns.
- 18.9 In consultation with the accountants appointed by the HDV/DevLLP, assist them to prepare and (once approved by the HDV/DevLLP) file annual corporate reports and returns for the HDV/DevLLP.
- 18.10 Organise meetings of the relevant Board and any committee of the Board, including the circulation of notices, agendas (and associated documents) in accordance with the Members' Agreement.
- 18.11 Supply to the HDV/DevLLP all documents reasonably required for the purpose of making any Board decision (or that of any committee of the Board).
- 18.12 Send out demands in respect of any sums required to be paid to the HDV/DevLLP by its members.
- 18.13 Arrange for the execution and/or sealing of documentation by or on behalf of the HDV/DevLLP.

19. **CORPORATE SERVICES ("Corporate Services")**

19.1 The following Services have been included within schedule 4 and fall within the Development Management fees which are budgeted within the HDV Financial Model (and in the case of those Services set out at 19.1.6 and 19.1.7 may be procured by the Development Manager on behalf of an HDV Party):

19.1.1 Capital Solutions (Advice in relation to securing Institutional funding or sales);

19.1.2 Treasury (Advice in relation to securing bank funding)

19.1.3 Sustainability

19.1.4 ICT Support (ICT setup support);

19.1.5 HR Support (Additional HR resource or training support);

19.1.6 Legal (Additional legal advice);

19.1.7 Tax Advice (Additional tax advice);

19.1.8 Accounting (Statutory accounting support);

20. **ADDITIONAL SERVICES**

20.1 The following services are excluded from the Services and, if instructed by the DevLLP, will result in an additional fee which sit outside schedule 4 of the Development Management Fee which is budgeted within the HDV Financial Model:

20.1.1 Residential Sales (OMS, PRS, Affordable);

20.1.2 Office and Retail Leasing;

20.1.3 Office and Retail Sales;

20.1.4 Marketing and Communications;

20.1.5 Cost Planning;

20.1.6 Capital Solutions (Securing Institutional funding or sales);

20.1.7 Environmental, Health and Safety

20.1.8 Services under the CDM Regulations

20.1.9 Appointment of the Manager pursuant to the limited partnership agreement for InvLP

Provided that the management, supervision and co-ordination of the provision of these services by third party consultants appointed or to be appointed by DevLLP shall fall within the Services to be provided by the DM.

## **PART B**

### **PROJECT MANAGER SERVICES**

#### **1. Strategy and General**

Outlining the approach to local supply chain engagement and utilisation.

#### **2. Appointment of the Professional Team**

2.1 As soon as reasonably practicable and in any event before the commencement of any works (and in accordance with the Procurement Policy) enter into the appointment of the professional team on behalf of HDV/DevLLP and deliver to HDV/DevLLP certified copies of the appointments.

2.2 Before appointment of any member of the professional team, obtain and deliver to HDV/DevLLP details of the professional indemnity insurance cover of the body in question and confirmation from its insurance brokers or underwriters that the insurance remains in force.

2.3 Ensure that the terms of appointment of the members of the professional team together cover all design and contract administration services necessary for the proper completion of any works.

2.4 Keep under continuous review and diligently take all reasonable steps necessary to procure the due performance and observance of the obligations and duties of each member of the professional team, and instruct them and coordinate their activities as necessary with a view to achieving the satisfactory completion of the development of the properties in accordance with the Business Plans.

2.5 Not do anything which, nor omit to do anything the omission of which, would entitle a member of the professional team to treat his contract of appointment in connection with the works as terminated by breach.

2.6 Not terminate the appointment of any member of the professional team without the approval of HDV/DevLLP.

#### **3. Preparing and Updating a Programme**

3.1 Establish an overall detailed development programme for all activities connected with the development of the properties consistent with the outline programme and revise it as often as necessary.

3.2 Monitor and expedite all activities connected with the development of the properties with a view to maintaining progress in accordance with the development programme.

3.3 As soon as becoming aware of any actual or potential delay to the progress of the works supply to DevLLP written details of the reasons for the delay and of the expected effects.

3.4 Use all reasonable endeavours to avoid delays to the works and, if they cannot reasonably be avoided, to mitigate their effect, including (where required by DevLLP) accelerating works so as to overcome delays.

#### **4. Design of the Properties and the Approved Plans**

4.1 Ensure that in relation to the design and programming of the properties it procures that the professional team prepare detailed specifications and drawings showing the development of the properties in accordance with the relevant Business Plans, any planning conditions and the design principles specified by HDV/DevLLP.

4.2 Thereafter throughout the course of the development of the properties, procure that the professional team prepare such further detailed specifications and drawings as may be necessary or appropriate to illustrate in all material respects the design, content and quality of the works as they progress in accordance with the planning conditions and the Business Plans.

## 5. **Obtaining Consents**

- 5.1 On DevLLP's behalf apply for (or where appropriate arrange for other members of the professional team to apply for) and use reasonable endeavours to obtain any Consents from time to time as may be appropriate before commencement of and throughout the course of the development of the properties (save for any consents in relation to outline planning permission, detailed planning permission and listed building consent which are to be procured by the [Development Manager]), the form and content of all applications and all supporting documentation having first been approved by DevLLP, provided that such approval shall be deemed to be given where no response is given to the Development Manager within 5 Business Days of the Development Manager requesting approval.
- 5.2 If a Consent is refused, on DevLLP's behalf and subject to their approval, appeal against the refusal or take such other action as may be appropriate in order to proceed with the relevant development(s) at a property.
- 5.3 If conditions relating to any Consents are unacceptable to DevLLP (acting reasonably) and if so requested by DevLLP on their behalf make or join in making such appeals, objections or representations as DevLLP may require.
- 5.4 On behalf of DevLLP apply for and use all reasonable endeavours to obtain any necessary orders for the stopping up or diversion of highways or footpaths to the extent that they may be required to enable the development of the properties to be carried out.

## 6. **Building Contract Tender Process**

In accordance with the Procurement Policy and Contractor Framework Agreement:-

- 6.1 In conjunction with the professional team, advise as to what design documents and other documents and information should be in the tender package and as to the form of the tender documents.
- 6.2 Carry out financial checks and make other appropriate enquiries as to the repute, competence and suitability with respect to the works of any proposed building contractor and devise and undertake appropriate pre-tender qualification procedures.
- 6.3 In conjunction with the professional team examine, assess, report and advise on all tenders received and the vetting of the building contractor and specialist sub-contractors and suppliers, and make recommendations in relation to the foregoing.
- 6.4 In conjunction with the professional team advise as to the form of documentation to be adopted in relation to sub-contractors (both as between the building contractor and the sub-contractors and between the sub-contractors and DevLLP).
- 6.5 In selecting a building contractor, act in good faith on an arm's length basis and without regard to any arrangements or relationship which the Development Manager may have with any prospective contractor that do not relate to or are not relevant to the development of the properties.
- 6.6 Ensure that the Development Manager and the building contractor execute and enter into a building contract before commencement of the relevant works and supply a certified copy to DevLLP, together with any drawings referred to in it.
- 6.7 Procure that the building contractor's obligations under any building contract are adequately secured.
- 6.8 Take all reasonable steps necessary to procure the due performance and observance of the obligations and duties of the building contractor under any building contract.
- 6.9 Not do anything nor omit to do anything which would entitle the building contractor to treat any building contract as terminated by breach.



- 6.10 Save where an alternative strategy is agreed with DevLLP use all reasonable endeavours to apply and collect all liquidated and ascertained damages demandable from and payable by the building contractor under any building contract.
- 6.11 Notify DevLLP of any perceived shortfall in performance of the building contractor and any dispute arising pursuant to any building contract or any sub-contract
- 6.12 Not terminate the building contractor's appointment under any building contract without the approval of DevLLP.

## 7. **Execution of the Works**

- 7.1 Issue instructions and directions to the building contractor and the members of the professional team as necessary to carry out the works.
- 7.2 Save where any members of the team have been novated to the Contractor keep under continuous review the performance of the members of the professional team and instruct them and co-ordinate their activities as necessary with a view to achieving the satisfactory completion of the properties according to the development programme.
- 7.3 Closely monitor the performance of the works with respect to compliance with the development programme.
- 7.4 Use all reasonable endeavours to procure that the works are carried out:-
- 7.4.1 in a good and workmanlike manner and in accordance with good industry practice generally accepted at the date of their execution;
  - 7.4.2 with suitable appropriate quality materials of their several kinds according to good industry practice generally accepted at the date of their execution;
  - 7.4.3 in accordance with the Business Plans and the Consents;
  - 7.4.4 in compliance with the planning conditions and any statutory requirements regulating the works; and
  - 7.4.5 in compliance with all statutes, statutory orders, and regulations made under or deriving validity from them, and any requirements and codes of practice of local authorities and competent authorities affecting the works.
- 7.5 Manage the issue of Practical Completion in accordance with the obligations set out in Part A paragraph 11 of this Schedule 2.

## 8. **Site Security Setup and Monitoring**

- 8.1 Ensure temporary secure enclosures are erected around the works on behalf of DevLLP to the reasonable satisfaction of DevLLP and maintained in good condition.
- 8.2 Save where the responsibility of a contractor employed by DevLLP procure the removal of all such enclosures upon practical completion of each relevant development at a property.

## 9. **Management of Utilities Services**

- 9.1 Procure that during the execution of the works proper arrangements are made with the supply authorities for the provision of temporary utilities services required for the carrying out of the works.
- 9.2 Advise on and structure efficient and economic long-term arrangements to be made with suppliers for the provision of utilities to the properties and in consultation with the professional team and DevLLP's solicitors use all reasonable endeavours to ensure that all necessary legal formalities (including substation and transformer chamber leases or transfers)

10. **Meetings and Communications with Suppliers**

- 10.1 Arrange, chair and minute periodic meetings (not less frequently than monthly where there is active development of a property) of the building contractor and the professional team to discuss, monitor and expedite the progress of the development of a property and attend all other periodic and ad hoc meetings related to the development of a property.
- 10.2 Keep full and proper records of all meetings and negotiations attended or conducted by the Development Manager and on request provide copies to DevLLP if required.
- 10.3 Establish and maintain lines of communication for the exchange of information between the members of the professional team, the building contractor and sub-contractors and others concerned in the development of the properties.

11. **Provision of Information**

- 11.1 Keep DevLLP informed of the progress of the works and any material problems or delays affecting the works.
- 11.2 Supply promptly to DevLLP copies of any relevant notices, drawings, calculations, specifications, reports, certificates, programmes and other similar items relevant to the works received from the building contractor or any member of the professional team or from any local or other competent authority or statutory undertaker or other third party.

12. **Cost Control**

Advise DevLLP upon the comparative cost of alternative designs and methods of construction.

13. **Inspections, Tests and Claims**

To review and report to DevLLP and the professional team on the quality of execution and the progress of the development of the properties.

- 13.1 Monitor the progress of remedial works during the defects liability period and the making good of defects and enforce the defects liability provisions in the building contract.
- 13.2 Inspect the works and prepare a schedule of defects itemising defects, shrinkages, and other faults due to materials or workmanship not in accordance with this Agreement and the standards specified in the building contract, or to faults occurring before practical completion.

14. Comply with the reasonable requirements of DevLLP in relation to the prosecution of claims, including the conduct of proceedings before any adjudicator, arbitrator, tribunal, or court pursuant to any claim or action against the building contractor or any sub-contractor or the professional team and keep DevLLP fully informed of progress and all material steps taken.

15. **Insurance Management**

- 15.1 Where insurance is to be the responsibility of the building contractor, monitor the insurance and in the event of it being allowed to lapse arrange for the alternative insurance of the works in accordance with such powers as may exist under the building contract.
- 15.2 Apply all proceeds of insurance effected by the Development Manager in reinstating the insured damage and procure that the building contractor and all other third parties comply with their obligations in relation to reinstatement of any works destroyed or damaged by an insured risk, report on any non-compliance and take such steps as are approved by DevLLP as a result.

16. **Tenant Leasing**

- 16.1 In so far as the Development Manager is able to ensure that the works are planned and carried out in such a way as to avoid or minimise disruption to occupiers of adjoining land and its visitors and to maintain access and all facilities to which it is entitled.

17. **Management of the Practical Completion Process**

- 17.1 Save where this obligation is passed to a Contractor if a certificate of practical completion is issued subject to a snagging list of items remaining to be completed or remedied, use all reasonable endeavours to procure that those items are completed or remedied (as the case may be) as soon as practicable (and in any event not later than 6 months) following the issue of the certificate of practical completion.
- 17.2 As soon as reasonably practicable (and in any event no later than 20 Business Days) after the date of the certificate of practical completion in respect of a development at a property (or in respect of the last section of such property to reach practical completion) provide DevLLP with:
- 17.2.1 3 copies each of all technical specifications and maintenance and operating manuals in relation to all installations and services comprised in the works certified as being complete and correct by the employer's representative;
  - 17.2.2 3 complete hard copy sets of all relevant plans, sections, elevations and drawings (together with further reproducible sets in an industry standard electronic format on CD-Rom or an equally convenient and accessible medium) showing developments at the properties "as built";
  - 17.2.3 the originals or copies of all Consents, together with all material or relevant correspondence and documentation relating to the obtaining of them and copies of all associated drawings and plans and copies of all applications relative to them;
  - 17.2.4 evidence that all Consents have been obtained and complied with in full;
  - 17.2.5 copies of all test and commissioning certificates for all plant and equipment where relevant; and
  - 17.2.6 a copy of the relevant completion certificate issued by the relevant authority under the building regulations if available.

18. **Local Supply Chain Development**

- 18.1 The Development Manager shall set out plans to encourage local suppliers to participate in DevLLP activities in each Business Plan (the "**Local Supply Chain Development Plan**").
- 18.2 The Development Manager shall report on progress against the Local Supply Chain Development Plan annually as part of each quarter 4 progress report.

### SCHEDULE 3

#### RESOURCE PLAN

- 1.1 The Development Manager will provide the Services by dedicating all necessary resource from within the Development Manager's organisation to manage the day to day delivery of the development management process within the Services. Accordingly the Development Manager will set out in the draft Resource Plan to be provided for Dev LLP's approval pursuant to clause 4. 1:
- (a) detail of the relevant Services likely to be required for the period covered by the relevant Resource Plan
  - (b) an estimate of when such Services are likely to be required and for how long
  - (c) which persons (if approved by Dev LLP in accordance with this agreement) which sub contractors or consultants will be required and how much time each will be required to dedicate
  - (d) the relevant experience and qualifications of such persons; and
  - (e) an estimate of the likely costs to be incurred in providing the Services
- 1.2 The level of resource will be supplemented with additional resource from within the Development Manager's organisation as required and agreed with Dev LLP.
- 1.3 Where possible the Development Manager will seek to utilise local people to deliver the Services drawing from within the Borough (if possible).
- 1.4 The Development Manager will provide a HDV Chief Executive to DevLLP to oversee and/or carry out the performance of the Services to DevLLP.
- 1.5 The HDV Chief Executive will provide continuity and take the lead with overall strategic responsibility to deliver the Services to DevLLP.
- 1.6 Should the Development Manager seek to replace the HDV Chief Executive, it will notify DevLLP of its intention to do so and provide to DevLLP a person specification and C.V. of the relevant candidate for approval by DevLLP (such approval not to be unreasonably withheld or delayed).
- 1.7 The HDV Chief Executive will dedicate such time and resources as are required for the proper performance of the Services.
- 1.8 Resource Chart: The indicative resource structure will be provided to DevLLP and updated for inclusion within the HDV Business Plan as required from time to time by the Development Manager.

**SCHEDULE 4**

**KEY PERSONNEL**

| <b>RESOURCE</b>     | <b>INITIAL KEY PERSONNEL</b>  | <b>TIME COMMITMENT PER WEEK</b> |
|---------------------|---|---------------------------------|
| HDV Chief Executive | means [ ] or such other person as may be appointed from time to time by the Development Manager with the prior written approval of DevLLP | 5 days                          |

DRAFT

**SCHEDULE 5**

**FEE PAYMENT MECHANISM**

(this information is contained in the exempt part of the report)

DRAFT

**SCHEDULE 6**

**PART 1A**

**DEVELOPMENT MANAGEMENT KEY PERFORMANCE INDICATORS**

(this information is contained in the exempt part of the report)

DRAFT